Some firms insured for loss of S.E. Asian assets

LATE NEWS

The Mayaguez, Sea-Land Service Inc.'s container ship seized by the Cambodian government, is insured for $5 million for hull and containers under a special war risk policy written in the London market, Business Insurance learned. A spokesman for the H.J. Reynolds subsidiary said the exposure was being considered a war risk as of Tuesday, May 6. The vessel, with a crew of 39, was carrying a mixed cargo of commercial goods and military equipment.

By MARIE KRAKOWIECKI

NEW YORK—Five companies were insured for original values of some $50.3 million in Vietnam by the Overseas Private Investment Corp., (OPIC) and dozens of others had property coverage in Vietnam included on worldwide international group insurance packages.

But as sporadic reports continued to filter in of chaotic evacuations from Saigon and from Cambodia's main city, Phnom Penh, as the Communists reveled in their takeovers, exact details of insured losses continued to pose questionmarks.

Although losses are known to have occurred, most company officials reached last week, including some insurance company executives, continued to be in the dark regarding claims made against policies.

A representative of OPIC said no claims had yet been filed by any of the five companies insured by that organization in Vietnam. They include the Chase Manhattan Bank, The Singer Co., Foremost-McKesson Inc., Caltex Petroleum Corp., and Bank of America.

Caltex, which is owned by Standard Oil of California and Texaco, was typical of most firms queried in its response to questions about insured losses in the war-torn countries.

"Who knows what's going on over there? Things are changing every minute. I don't even want to talk about losses. We did lose some marketing facilities that are incidental to the petroleum business. But we had no refinery there," said a Caltex financial officer.

Continued on page 40

Tornado

Insured losses will reach $79.8 million after tornadoes, wind and hail hit seven states May 6 to 9, said the American Insurance Assn. Tornadoes alone caused $67.3 million damage in Omaha, of which $46.8 million was to 133 commercial structures. Hail damage there was less than $10 million. Wind and hail damage to insured property totaled $12.5 million in Arkansas, Iowa, Louisiana, Mississippi, Missouri and Texas.

Wide World photo



Week of May 19, 1975

business insurance

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

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Livestock poisoning kicks off $1 billion battle

By ELISABETH M. WECHSLER

GRAND RAPIDS, MI.—Northwest Industries Inc. of Chicago and two of its subsidiaries may be vastly underinsured for damages which may be paid in settlement of a $1 billion-plus suit filed by Farm Bureau Services Inc. of Michigan and its insurers, Fireman's Fund Insurance Co. and Auto-Owners Insurance Co., *Business Insurance* learned.

A highly toxic fire retardant was mistakenly supplied by the Northwest Industries subsidiaries to the Farm Bureau for use as an animal nutrient. Thousands of livestock have died in the three-year period and mutation of offspring has occurred. The potential adverse effects on human beings still are unknown.

So far, $8.5 million has been paid out by the insurers to farmers and other claimants. The coverage carried no deductible. The Farm Bureau has incurred additional losses of about $8.6 million in 1973 and 1974, primarily for "direct payments to parties involved in the disposition of livestock, testing of feed, preparation of data and legal defense costs," according to Kenneth G. Jones, risk manager for the Farm Bureau. This additional cost was treated as an expense by the Farm Bureau.

The suit represents a combination of the Farm Bureau's interests and a subrogation action by its insurers.

The other liability insurer for the Farm Bureau, New Hampshire Insurance Group, insured Farm Bureau in 1974 for a limit of $3 million. Mr. Jones said he expects New Hampshire will join the other plaintiffs in the suit.

Northwest Industries is insured for liability up to $28 million although its attorneys dispute the fact that the coverage limit is on an aggregate rather than on an occurrence basis.

"There is insurance of at least that amount," said Jim Knox, an attorney at Northwest, who describes himself as "one of several attorneys participating on behalf of Michigan Chemical Corp., the principal defendant."

An industry expert on product liability who asked for anonymity said that "more companies will underinsure than overinsure. If the settlement is above the limits of Northwest's coverage, the company itself may be offered to cover damages. Or, Northwest could offer a compromise by paying a certain amount to the Farm Bureau each year."

"We'll certainly look to Northwest's resources (beyond insurance) if we have to," Mr. Jones said.

Travelers Insurance Co. insures Northwest for a primary liability layer of $1 million; Lloyd's of London insures a second layer of $2 million; American Home Assurance Co. carries the next $15 million; and Insurance Co. of North America and Aetna Casualty & Surety Co. each underwrite $5 million layers on the top. This information was confirmed by Mr. Knox.

The lawsuit, filed in November, 1974, names Northwest Industries, Michigan Chemical and Michigan Salt Co. Inc. as defendants and charges them with six counts of tort liability:

- strict liability in tort, claiming $200 million;
- implied warranty, $200 million;
- express warranty, $200 million;
- negligence, $200 million;
- indemnification, for which

Continued on page 8

Rockwell moves bulk of its casualty business to new broker, uses captive

By STEPHEN D. GILKENSON

PITTSBURGH—In a major shuffle of part of its insurance program, Rockwell International Corp. moved its non-aviation products, automobile and comprehensive general liability coverages, plus its insured workers' compensation program, to Travelers Insurance Cos.

Significantly, the move will also bring into play a Bermuda captive Rockwell activated a year ago to reinsure part of its property insurance written by Factory Insurance Assn.

Premium on the business is estimated to be upwards of $8 million.

With the switch to Travelers, Rockwell terminated a six-year relationship with Employers Insurance of Wausau. The broker on that business, Frank B. Hall, was also terminated.

The new broker for the program put together with Travelers is Daniell/Sapp/Boorn Associates, Pittsburgh. Peter E. Boorn, a principal of the firm, is the son-in-law of Rockwell chairman Willard F. Rockwell Jr. D/S/B has until now been a relatively small firm specializing in group insurance coverages. It has been the broker for Rockwell's employe benefit coverages, written by Metropolitan Life Insurance Co.

According to E. William Altstaetter, Rockwell's corporate director of insurance, the package was put together under a competitive bidding situation. Also bidding on the business were Marsh & McLennan, Johnson & Higgins, Alexander & Alexander, Schiff Terhune International Inc. and the holding broker, Frank B. Hall.

"It was absolutely the best deal for us," Mr. Altstaetter said of the choice of Travelers and D/S/B. "It had been six years since we had evaluated in a competitive atmosphere a major line of our insurance. We do this regularly."

Although Mr. Altstaetter would not comment on specifics, several persons close to the bidding situation, including some who participated, said they too believed it was "the best deal for Rockwell."

Daniell/Sapp/Boorn, sources said, will be playing a less active role than that of a traditional brokerage. "This way," said one source, "they were able to cut the heart out of commissions."

According to Rockwell's Mr. Altstaetter, his firm will be depending on the underwriters for more service in the future.

Continued on page 2

(AFFIX MAILING LABEL HERE)

Special notice

AN IMPORTANT notice to those readers still receiving *Business Insurance* on a "qualified controlled" basis: The complimentary subscription period has come to an end. If you want to continue receiving *Business Insurance* regularly, without interruption, please complete and mail the *KEEP BUSINESS INSURANCE COMING* card on page 9. We urge you to shoot the card back to us now while this issue is close at hand so there will be no risk of a break in service.

GE hospital plan goes to Blue Cross

By RICHARD L. GORDON

FAIRFIELD, CT.—General Electric Co. moved its nationwide employe hospitalization benefits program, with a total cost in excess of $100 million a year, to Blue Cross. The change was effective May 1.

General Electric previously had the hospitalization program through Metropolitan Life Insurance Co. and, in California, Aetna Life Insurance Co., for more than 20 years, the company told *Business Insurance*.

Metropolitan and Aetna Insurance Co. (part of the Aetna Life & Casualty Group) will continue to run the medical-surgical side of the health insurance package.

The hospital benefits package covering GE's 330,000 employes is unchanged in the move. GE is largely self-insured, and used Metropolitan and Aetna primarily as administrative service providers. GE will remain basically self-insured under the Blue Cross plan, *Business Insurance* learned.

Both General Electric and Blue Cross indicated there will be dollar savings under the new arrangement, but both firms de-

Continued on page 2

GE benefit shift . . .

Continued from page 1

clined to be specific on economies. "Let's face it," said a Blue Cross official, "they're taking advantage of our hospital discounts."

"This is a significant change," General Electric's insurance consultant and chief negotiator with Blue Cross, John D. Morris, said. Mr. Morris, however, declined to comment on the cost savings involved in the new pact.

"We have duplicated the General Electric comprehensive insurance package," said Robert C. Cole Jr., vp-marketing for Blue Cross of Massachusetts. "We have agreed to deliver it unchanged. It was a GE plan not a Metropolitan or Aetna plan."

Blue Cross of Massachusetts began working on the General Electric sale in 1970. In August, 1973, the Massachusetts unit of Blue Cross began a pilot program for GE's 30,000 employes in that state.

"They agreed to try Blue Cross, but obviously wanted to test Blue Cross before turning over the national program," Mr. Cole said.

"What we sold to GE was an administration and financing program," he said. "There were many parts of their old program that left much to be desired. There will be savings in administrative costs and financing with this program."

It is known that in 1974, GE paid premiums of $230 million for a total insured benefit package including health, life, hospitalization and accidental death coverage.

Mr. Cole cited the claims processing area as an example. Under General Electric's old programs, he said, employes had to take time off from work and go to a claims office and handle much of their own claims paper work. "Now it's all done automatically, but GE retains all of its control," he said.

General Electric will also benefit from Blue Cross's close relationships with hospitals, he said, particularly the Blue Cross experience in operating hospital utilization review programs.

General Electric has 330,000 employes across the nation. Including dependents, nearly one million persons will be covered.

Blue Cross said the addition of GE to the client roster means that nine out of 10 of the nation's largest corporations, based on the Fortune 500 list, now provide Blue Cross health benefits to all or part of their employes. ■

Agent/broker call

A MAILING OF questionnaires for the fourth annual *Business Insurance* Agent/Broker Profiles issue, to be published July 28, went out late last month. The issue will profile agents and brokers with $150,000 or more in gross revenues annually, and which do more than 50% of their business with commercial insurance consumers. Agents and brokers that may not have received a questionnaire may obtain one by writing on company letterhead to Ms. Linda Moskowitz, *Business Insurance*, 708 Third Ave., New York, N.Y. 10017. Or, for more immediate attention, Ms. Moskowitz may be reached by telephone, 212/986-5050. The deadline for all returns is June 10.

New benefit reporting forms are being mailed

WASHINGTON—Employe benefits administrators should be getting their first look at the new form that replaces the old D1 and D1-S forms.

The new form, EBS-1, was unveiled by Labor Department officials in Washington and is being sent to about 550,000 pension and welfare plans across the country.

The 19-page form, including instructions, resembles an IRS tax form. It must be filed with the government by August 31.

This form can also be distributed to plan participants and beneficiaries as the required plan summary under the pension reform law, providing that all answers are worded so the average participant can understand them.

The plan summaries must also be distributed by the August 31 deadline.

The government requested that plan officials be sure to include the government's mailing label with the form they file with the Labor Department.

This label includes the plan's new identifying number, and, without the label, processing by the Labor Department will be much more difficult.

Under its new reporting plans, the Labor Department will be discarding the old plan numbers assigned under the Welfare and Pension Plans Disclosure Act and instead will use the same identifying number that is assigned to benefit plans by the Internal Revenue Service.

The Labor Department originally had planned to have the new EBS-1 distributed and returned by the end of April. Difficulties in designing the form, however, pushed the filing deadline back to the end of August.

Assistant Labor Secretary Paul J. Fassar, in charge of that department's pension reform program, said that department officials in field offices would be trained to assist plan officials in completing the form.

He also said the department would announce a policy well in advance of the August 31 deadline for those plans that cannot meet the filing timetable.

As a last resort, the department can seek a federal court order to compel compliance with the new reporting requirement.

The EBS-1 form will go to an expanded number of plans. The old reporting requirements of the Welfare and Pension Plan Disclosure Act exempted plans with 25 or fewer participants. The new reporting rules contain no exemption for small funds. ■

Correction

A statement attributed to D. M. Whatmough, manager, general insurance, RCA Corp. in a survey story reporting what insurance managers were doing during economic recession (*Business Insurance*, April 21) was in error.

The statement read: "Inflation very definitely has had an impact (on RCA's corporate insurance program), particularly in the foreign area. We're doing updated valuations of all our properties to make sure they're insurable." The last sentence should have read, "to make sure they're not underinsured."

Rockwell . . .

Continued from page 1

"Basically," he said, "it's a fully insured program, but it involves taking advantage of some financial data reporting systems Rockwell has put together in its overall corporate management system. This is sort of a breakthrough with an insurance company. It was one of the key factors, in addition to the pricing of it, that made us decide on Travelers," he said.

Said Donald F. Muldoon, secretary, corporate accounts, at the Travelers:

"Rockwell has made a major investment in its financial data system and we tried as much as possible to make our reporting requirements conform to their existing system in the loss run area and in the location coding area, et cetera."

Regarding the less active role of the broker, Mr. Altstaetter said that the ability of Travelers to take data off Rockwell's financial reporting system will be a key saving for the firm. "As a result," he said, "there are certain things the broker doesn't have to perform in a more classic role."

Mr. Alstaetter would not discuss how the new program integrates with Rockwell's Bermuda captive insurance company, Constantine. It is believed, however, that the move parallels one made by the company just over a year ago when the firm radically altered its property risk management program by activating the captive and reinsuring 20% of its total property coverage, which it had moved to Factory Insurance Assn.

Under that setup, FIA is the primary carrier over a straight $20,000 deductible, on coverage for some $2.8 billion in property damage and business interruption. The captive has a 20% participation in anything over the $20,000 deductible. FIA pays about 30% of its gross annual premium to the captive for reinsurance, less a commission charged for engineering, administration and claims handling services.

Assisting Rockwell in the design of that program was Armrisk Inc., a division of American Risk Management Inc., a manager of captives in Bermuda.

Armrisk also worked with Rockwell drawing up specifications for the new casualty program that went into effect with Travelers April 1. It was from these specifications that the business was put out for bids.

The shift to Travelers, the biggest in terms of premium volume that insurer has picked up so far this year, does not affect Rockwell's aviation liability insurance programs. Those risks, including aircraft products liability, remain in the London markets. ■

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West Insurance Managers

Benefit officials relate ERISA woes in D.C.

By RICHARD L. GORDON

WASHINGTON—For the first time since Rose Garden enactment ceremonies took place last September, a delegation of pension industry officials went to the White House to talk pension reform.

What they said is there's trouble with the eight-month-old Employe Retirement Income Security Act (ERISA).

Business Insurance, covering the two hour May 7 White House meeting from inside the Roosevelt Room, heard Ford Administration officials, led by Treasury Under Secretary Steven Gardner, being told that:

- Pension plans covering as many as one million participants may be terminated this year because of the new liabilities created by the law, with the employes presumably moving to less liability-laden Individual Retirement Accounts (IRA's).
- Companies considering the establishment of new plans appear to be steering clear of defined benefit pension formulas because of the law's 30% employer contingent liability provision.
- Pension plan trustees, especially for multiemployer plans, are resigning because they feel too vulnerable now that the law makes them personally liable for fiduciary breaches.
- Contributory pension plans are feeling pressure from Individual Retirement Accounts because the pension law provides tax deductibility for IRA contributions while employe contributions to group plans are not tax free.

Mr. Gardner was accompanied by the chiefs of the principal federal agencies involved with the bill: Internal Revenue Service Commissioner Donald A. Alexander, Assistant Labor Secretary Paul J. Fassar, Acting Pension Benefit Guarantee Corp. (PBGC) Executive Director Steven Schanes, and Social Security Commissioner Bruce Cardwell.

The 20-member industry delegation was organized by the Association of Private Pension and Welfare Plans, of Washington.

From the government side of the table, Assistant Secretary Fassar told the group that the Labor Department plans to announce soon some steps that will make it possible to indemnify plan trustees and thus ease some of the problems surrounding fiduciary liability.

PBGC's Mr. Schanes said his agency is working "very hard" to meet a May 31 deadline for developing a termination insurance premium structure based on the financial condition of the individual pension plan.

The new rate structure would replace the interim system which assessed defined benefit pension plans run by single employers $1 per participant and multiemployer plans 50 cents per participant.

PBGC has already collected in excess of $32 million in premium under the $1/50 cent formula.

Mr. Schanes said there are still many problems to be worked out before there will be a solution to insuring the 30% employer liability. The liability arises because PBGC can assess a sponsoring employer up to 30% of his net worth if he terminates a pension plan in such poor financial shape that it cannot meet what PBGC would prescribe as "basic" benefits.

"This has to do with insuring the future profitability of U.S. enterprises, and that is not your normal casualty insurance risk," he said.

The corporate contingent liability and the individual fiduciary liability were particular sore points with the industry delegation.

Forcing personal liability on fiduciaries is "a punishment clause," charged William H. Bret Jr., vp of A. S. Hansen Inc., actuarial consultants.

He said he drew little comfort from the present availability of commercial insurance to cover this exposure. Once there are a few major awards under these policies, he said. "I don't think you're going to be able to buy insurance for this. I can't imagine anyone being able to underwrite the risks."

"My advice for multiemployer plan trustees coming to me is for them to resign," Mr. Bret said.

"The fearfulness of liability is just appalling," said Richard A. Van Deuren, of the Milwaukee law firm of Reinhart, Boerner, Van Deuren, and Morris.

A two hour "sit-down" with his attorney prompted one multiemployer trustee for a large southeast plan to resign, according to Carlton R. Sickles, president of Carday Associates, pension plan administrators.

The liability problem has had two other results the industry men reported: first, it is encouraging some plan sponsors to scrap their plans entirely: second, it is scaring off companies from setting up any new defined benefit plans.

James B. Zischke, chairman of The Zischke Organization, San Francisco-based consultants, said some of his clients were already considering scrapping pension plans covering 10,000 participants because of the new liabilities inherent in running them.

He estimated that his firm deals with about 1% of the private plans in the country. If the same experience holds true for other plans, he said, then one million employes could find themselves outside of group pension plans this year.

Mr. Bret of A. S. Hansen said that for every four companies seeking advice from his firm on establishing new plans, two of them decided against defined benefit plans because of the 30% employer contingent liability.

PBGC is forecasting from 3,000 to 4,000 terminations of define benefit pension plans this year.

IRS Commissioner Donald Alexander told the group that the 3,-000 rate is not significantly higher than the 1973 termination rate which was without the problems of the new law.

He acknowledged, however, that there was an increase in interest in defined contribution plans, according to applications for tax qualification filed with IRS.

The industry's problems with reporting are by no means over either, if the White House meeting is any guideline.

Most of the panel members told a surprised Assistant Secretary Fassar that there was "no way" that they could meet the August 31 deadline set for filing the new EBS-1 form with the Labor Department. The EBS-1 form replaces the old D1 and D1-S forms.

Many plans simply do not have earnings and service records for all their participants. The source of last resort for this information usually is the Social Security Administration, but it will apparently be overwhelmed by an avalanche of requests. ■

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HARTFORD STEAM BOILER INSPECTION AND INSURANCE

Variety of legislative acts get hearty push as malpractice worries spread

By MARGARET LeROUX

NEW YORK—"There isn't a malpractice crisis," a spokesman for the American Medical Assn. (AMA) noted in an interview with *Business Insurance*. "There are 50 crises."

Malpractice premiums have skyrocketed in some states. Pennsylvania's insurance department, for example, approved a 207% increase requested by Argonaut insurance Co. late last month, one of a number of increases malpractice insurers have been granted in the past year, while in other states the market for coverage has virtually disappeared.

In New York and New Jersey, Argonaut is cancelling the policies of the states medical societies after the state insurance departments disputed rate increases of 198.7% and 410.8% respectively.

California became the first state to be hit by a doctors strike May 1 when surgeons and anesthesiologists refused to work without malpractice coverage. Argonaut had cancelled their insurance as of that date.

All California physicians are not without malpractice coverage, however. Travelers, CNA and Aetna are still writing physicians' liability policies in the state.

Under pressure from physicians, lawyers and underwriters almost every state legislature is considering the malpractice issue. A number of them have enacted emergency legislation to provide coverage for medical societies and hospitals whose insurance has been cancelled; few, though, have enacted measures providing any long term solutions to the problem.

In New York, the legislature and the governor's office are trying to hammer out a malpractice insurance system, but are stalemated over the role the state insurance fund will play.

The legislature supported a pooling arrangement of 300 private insurance companies, while Gov. Hugh Carey favors giving the superintendent of insurance authority to bypass private companies and activate the state fund as the sole underwriter of malpractice insurance.

California's governor, Edmund G. Brown Jr. is preparing his own program for dealing with malpractice problems and it is rumored he will call the state legislature into special session to act on it.

In Florida, Argonaut's 200% rate increase spurred the proposal of several malpractice bills. Between the senate and the house, a total of 16 bills were passed, only to be scratched by the president of the state senate, who is substituting a program of his own for consideration by a joint committee.

Eleven states have passed since Jan. 1 malpractice legislation, ranging from commissions studying the problem to elaborate packages of laws. "The situation is changing on a day to day basis," the AMA spokesman noted.

Malpractice legislation recently passed by state lawmakers includes:

Idaho—Passed three malpractice laws; one, limiting physicians' liability in a malpractice situation to $150,000 per person per occurrence and $300,000 for any one occurrence; attorney contingency limited to 40% of amount sought. Physicians must be insured or able to prove they are financially responsible before they can be licensed to practice in the state.

An informed consent law requires a doctor to inform his patient of possible consequences of any health care service provided.

The mechanics for setting up a joint underwriting association were authorized, in the event the director of insurance determines malpractice insurance is not available at a competitive rate.

Maryland—Passed three laws; one setting a statute of limitations for malpractice cases of three years from the discovery of the situation or a maximum of five years.

A second law allows physicians to set up a mutual insurance company funded by a $300 tax on physicians. The mutual would come under the jurisdiction of the state insurance commissioner.

A third law authorizes the insurance commissioner to establish a joint underwriting association. Maryland already has a joint insurance association which operates the FAIR plan and this association would then write malpractice insurance.

Wisconsin—Amended a statute to include health care professional liability in an existing state risk sharing plan. "This was just emergency legislation," a spokesman for the state insurance department said. "There are at least three bills prepared regarding tort liability in malpractice situations."

North Dakota—Passed a "stopgap measure," the deputy state insurance commissioner said. "If the need arises, it would permit the state's physicians to set up a mutual insurance company."

A mandatory $500 tax on all doctors practicing in the state would be used to establish the fund and new doctors would be charged on a similar basis.

South Dakota—Passed a statute of limitations of one year after the discovery of the incident or a maximum of three years in malpractice cases. A committee to review the qualifications of physicians was established. The state's doctors are presently studying formation of a mutual insurance company.

Arkansas—One of three malpractice laws passed establishes a reinsurance exchange for anyone in the medical or health care profession who can't get malpractice insurance in the regular market. The state's insurance counsel explained that a physician, for example, can apply to any casualty company writing insurance in the state and the company can refer the policy to the reinsurance exchange which then assigns the risk to all liability underwriters in the state on a pro-rated basis.

Another law requires all physicians to report any malpractice claims to the state board of examiners within 10 days after the claim is made.

A third piece of legislation establishes arbitration panels throughout the state. The decision of the panels, however, is not binding, nor can they be used in a lawsuit.

Malpractice laws were pushed through the Arkansas legislature with good reason the only designated underwriter for malpractice insurance in the state is St. Paul Fire and Marine, "and if they pull out of the state," the in-

Continued on page 6

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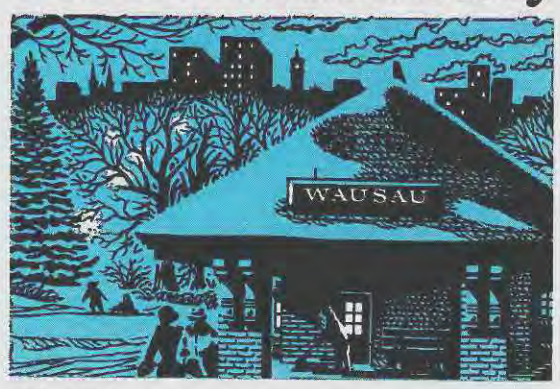
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EMPLOYERS INSURANCE OF WAUSAU Wausau, Wisconsin

Idaho medics lose their carrier, shift to St. Paul

BOISE, ID.—Idaho physicians whose malpractice insurance will be cancelled by Argonaut Insurance Co. as of June 1 have been offered coverage on a claims-made basis by St. Paul Fire & Marine Insurance Co.

St. Paul is offering the coverage even though it is not accepting any new malpractice business elsewhere in the nation because of recent malpractice legislation passed in Idaho.

"Idaho led the nation in getting legislation passed and signed into law that is expected to improve the malpractice claims climate," St. Paul's president, Waverly Smith commented.

Among legislation that St. Paul expects will favorably affect the claims situation are:

- modification of the law as to what constitutes informed consent;
- limited liability of $150,000 for injury or death to any one patient and $300,000 for injury or death to two or more patients out of one occurrence;
- the requirement that physicians and hospitals file a statement of insurance;
- doctors and hospitals complying with the law are subject to malpractice claims only for compensatory damages, not paid by other sources.

The Idaho Medical Assn. has approved St. Paul's offer even though the American Medical Assn. has been urging doctors not to accept claims-made policies, which cover physicians only for claims filed against him during the year the policy is held.

The AMA favors insurance on an occurrence basis, which covers damages that occur in the policy year when claims are filed later.

Idaho's 500 physicians formerly covered by Argonaut will be offered the St. Paul coverage on an individual basis. St. Paul will not be a sponsored insurance company by the association, but the company will offer the association its facilities for loss prevention and education.

Premiums for the claims-made policy offered to the Idaho physicians are rated on a five-year basis, according to classification of physicians, a spokesman for the underwriter said.

For example, the classification physician-no surgery will be charged $367 for the first year; the amount will be graduated to $793 by the fifth year of coverage. ■

Malpractice . . .

Continued from page 4

surance department counsel said, "we're without coverage."

Indiana—A package of malpractice legislation was passed including a patient's compensation law which limits the liability of underwriters to $100,000 per company in any one case or a maximum of $500,000 per case. A state fund, established by a one to 10% surcharge on physicians' liability insurance premiums will cover liability amounts from $100,000 to $400,000.

The state insurance department was given authority to name an insurance company to sell malpractice insurance on behalf of the state to physicians who can't obtain it in the regular market. The state allocated $1.5 million for this purpose.

A two year statute of limitations, from time of discovery of an incident, was passed for malpractice claims.

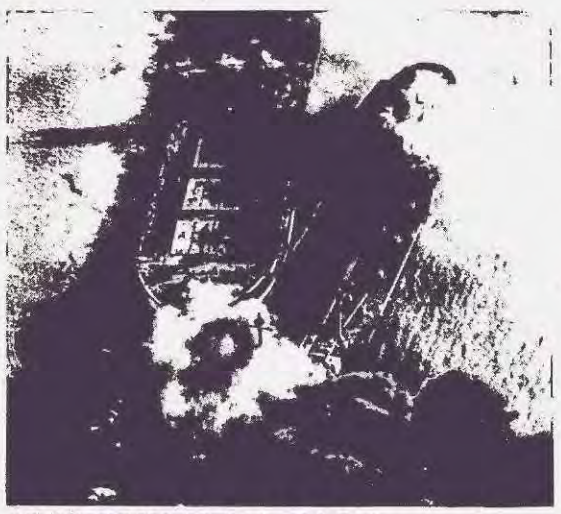
Attorneys' contingency fees are limited to 15% on amounts over $100,000. Regular contingency fees apply for amounts less than $100,000.

A person filing a malpractice claim in Indiana will no longer be able to seek a monetary figure, just a remedy for injuries suffered.

Another law establishes a board of physicians to review malpractice claims. All doctors practicing in the state must show financial responsibility or be insured.

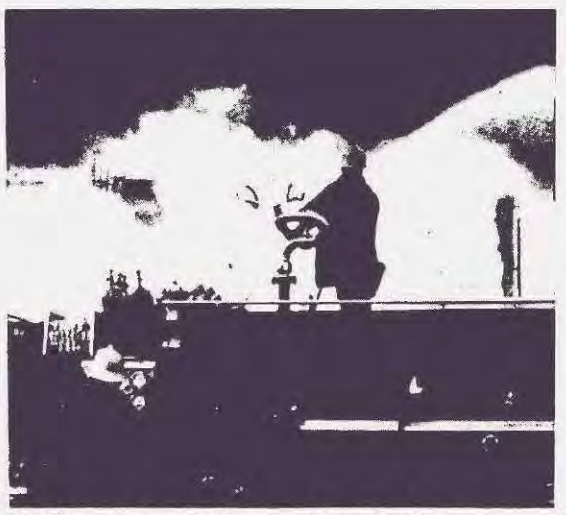
Two experts on constitutional law were consulted on the state law, enacted last month, which limits medical malpractice claims to $500,000, according to a spokesman for Gilbert M. Wilhelmus, M.D., president of the Indiana State Medical Assn. Both agreed that the law is constitutional.

"The association is pleased with the bill," Dr. Wilhelmus said. He commended the legislation for taking "the lead in trying to solve the medical malpractice crisis." Indiana was the first state to enact a law limiting malpractice awards. ■



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Doctors view use of captive reinsurer

CHICAGO—A reinsurance captive is presently being investigated by the American Medical Assn. (AMA) to underwrite ceded medical malpractice coverage for its members, *Business Insurance* learned.

The AMA board of trustees earlier this month approved study of a reinsurance facility to work with any primary insurance captives established by state medical societies, the AMA told this magazine.

This is a change in plans, following reports that the AMA was considering a captive to underwrite primary malpractice coverage for its doctor members (*Business Insurance*, May 5).

Currently, medical societies in New York, Maryland and Michigan are considering the use of captive underwriting companies as a solution to the malpractice insurance problem. This magazine had reported that local organizations would possibly set up their own captives to insure against malpractice risks.

A spokesman for the AMA stressed that unless there are changes in the tort liability system, captives for malpractice insurance or reinsurance "would be a disaster."

The AMA's reinsurance study may come up for discussion at the association's convention in June. "We hope to have the study ready by then," the AMA spokesman said. ■

Weather tab $5 mill.

Spring tornadoes, heavy rains and hail caused an estimated $5 million in insured losses in a four-state area, April 18 to 20, according to the American Insurance Assn. A fifth state, Michigan, suffered flood losses but they haven't been totaled yet. A tornado hitting Jackson, Tn., caused about $3.5 million in insured damages. Wind and hail caused an estimated $800,000 in insured losses in Illinois, $480,000 in Indiana and $200,000 in Kentucky.

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We know our business. And we want yours.

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Toxic chemical suit . . .

Continued from page 1

the Farm Bureau claims $275 million, Fireman's Fund claims $550,000 and Auto-Owners Insurance Co. claims $5,050,000 plus reimbursement to all plaintiffs for other costs, attorney's fees and interest; and

• declaratory relief, seeking an unstated amount.

At the time of the suit's filing, an estimated 9,390 cattle had been damaged or destroyed, plus 2,029 hogs, one million chickens, 397 sheep and 22,000 pheasants.

The defendants supplied the Farm Bureau with magnesium oxide (MgO) a common source of nutrient in dairy animal feed. However, between October 1971 and July 1974, as the Farm Bureau's "only supplier of MgO," the defendants are charged with "supplying unknown quantities of polybrominated biphenyl (PBB), an extremely toxic fire retardant," states the suit.

According to Mr. Jones at the Farm Bureau, normally there would be a noticeable difference between the two substances. But Michigan Chemical had developed a fire retardant that coincidentally had "the same texture and appearance as MgO."

Both substances were packaged in plain brown paper wrapping with only small identification stamps indicating which product was which, according to Mr. Jones. "It was a small stencil which you wouldn't notice," he alleged. (Northwest Industries denied charges of failure to adequately label a hazardous substance.)

The Farm Bureau believes that "additional animals and animal by-products will be damaged or destroyed in the future as a result of the defendants' sale of MgO" which contained PBB.

Mr. Jones conceded that placing a value of damages requires "an educated guess.

"A year ago we were getting a number of claims from heavy contaminants," Mr. Jones told *Business Insurance*. "Now a greater number are from farmers involved in cross contaminants, which are not as serious."

The Farm Bureau complains that it was "forced to change its insurance program," Mr. Jones said. "Now the products are insured separately," which he said added a "significant extra cost."

He said he hoped the case would go to court by September and "would like to see it resolved by the end of year," adding that it probably would take two years.

Northwest Industries and its co-defendant subsidiaries have tried to play down the ramifications of the situation. In the defendants' filed response, they state that "substantially all of plaintiff's claims in this action are based upon speculation and conjecture concerning future events, which may or may not occur, so that there exists no justifiable controversy between the parties."

The defendants "raise the question of how liability, if any, for losses sustained by plaintiffs and claimants is to be determined among Michigan Chemical, Michigan Salt and the Farm Bureau," the brief states. The defendants requested a change of venue from Missaukee Country, Michigan, to Gratiot County because they said "it will be impossible to impanel an impartial jury in Missaukee."

Northwest Industries noted in its 8K report to the Securities & Exchange Commission, dated December 1974, that the insurers of the Farm Bureau and Michigan Chemical "have each paid one-half, without any determination of the respective liabilities of either to the other," and added "it is not possible . . . to determine . . . any liability . . . which may exceed (Michigan Chemical's) insurance coverage."

Another point made by Northwest in its 1974 8K report was that its being named a defendant "is improper" and denies it has any liability in the matter.

The 1974 annual report for Northwest Industries refers to the litigation and states: "This unfortunate matter is being handled by the company's insurers and should result in no material impact on Northwest Industries."

In another paragraph of the report, this time referring to Michigan Chemical, Northwest Industries states "the alleged damages of several hundred million dollars are greatly exaggerated."

When the suit was filed, the plaintiffs contended "an excess of $66 million in claims were estimated to be filed in the state."

The current situation has its roots in a mishap which occurred in June 1973 when 762 pounds of PBB, mistaken for feed additive, was shipped to Farm Bureau Feed cooperatives, mixed with feed and distributed throughout the state.

The following spring, a number of Michigan dairy cows showed tremendous reduction in milk production and animals of all kinds were dying inexplicably or bearing deformed or stillborn young. The state Department of Agriculture worked for months before identifying the source.

Starting in July 1974, the department began quarantining herds and destroying animals which showed concentrations of one part per million of PBB in their fat. In November, the allowable level of PBB was lowered to 0.3 parts per million by the U.S. Food and Drug Administration.

All the animals which died from what is presumed to be PBB poisoning, showed clear symptoms: black sores, swollen joints, loss of hair and deformed young.

The Farm Bureau stated in its suit that it expects the Michigan State Department of Agriculture to "quarantine and order the destruction of sizable numbers of animals . . . as well as the destruction of substantial additional quantities of animal by-products."

Due to recycling of animal carcasses and secondary contamination of animal feed, PBB was consumed in small amounts by most of the state's farm animals.

The local populace is understandably concerned by the situation. There have been conflicting claims about the safety of Michigan meat and dairy products contaminated by PBB. Local merchants noted that sales of meat, poultry, milk and egg which were holding steady could change radically if PBB is shown to have adverse effects on human health.

The state Department of Agriculture allows meat with less than 0.3 parts per million of PBB to be sold. But on farms outside the city animals reportedly are dying with concentrations of PBB that are less.

Dr. John L. Isbister, chief of the bureau of Community Health of the state Department of Public Health believes there is no immediate need to ban all PBB-contaminated food products.

One of the estimated 1,500 to 2,000 farmers who ate and drank their own contaminated meat and dairy products said he has been bleeding from the ear and has lost 43 pounds.

An official of the state Department of Agriculture conceded that while the short term effects of PBB poisoning on humans are still undetermined, the long term effects are completely unknown. ■

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Z-A's award winner sees safety as risk control key in his hazardous field

By PAUL R. MERRION

CHICAGO—1975 has been a good year for James Earl Mankins Sr., owner and president of the Eagle Trucking Co. in Kilgore, Tx., and this year's winner of Zurich-American Insurance Co.'s Albert Gallatin Award for the outstanding small business leader in the United States.

Beside winning the award, Mr. Mankins this year began serving his first term as state representative from his district. And his long-distance heavy oilfield equipment hauling firm is riding the crest of two years' good experience in safety and public liability.

Chosen both for community service and business success, Mr. Mankins readily admits that insuring a business in Texas is a problem because of stringent state insurance restrictions there. But the retrospective rating plans he arranged for all risks except health insurance, combined with the company's good loss experience, enabled his firm to recoup some of the premiums paid to Continental Assurance Co. last year.

Surprisingly, since Eagle Trucking's heavy equipment hauling business almost qualifies as a "hazardous" job, there have been hardly any accidents this year, Mr. Mankins said. Two good reasons for this experience are a full-time safety engineer, who set up a sixty-day on-the-job and classroom safety training program one and one-half years ago, and concern from the top management on down for safety awareness.

"You've got to get the supervisors to think safety," the award winner said. "That's the key." The company also conducts weekly safety meetings for all employes except those on the road.

Eagle Trucking's fleet of 150 trucks, 52 of which are owned and the rest leased, are insured for property damage and collision liability for $100,000/$300,000 with no deductible. Continental also writes this coverage, on a retrospective basis, and the premium last year was almost $400,000, Mr. Mankins said, after breaking even on the retrospective rating plan.

The company carries collision insurance on new trucks for only one year, Mr. Mankins said, because it is "too expensive."

"With the premium you have to pay, you can afford to lose a few trucks."

Key man life insurance is carried as a clause in the group health plan, with a $5,000 coverage for supervisors and $3,000 for regular employes, he said.

Mr. Mankins' health insurance program is more liberal than many small firms' in that all costs are picked up by the company. A change last year to American Mutual Insurance Co., part of the Mutual of Omaha group, helped Eagle Trucking to fight the "continuing battle against increasing costs," he said. The company pays a $50,000 premium for covering its 175 employes. A major problem in arranging the health insurance is that the business is spread nationwide, so benefits, such as the cost of a hospital room, cannot be set in advance and must be determined locally, he said.

Workers' compensation is one area that gives the Gallatin award winner headaches, because benefits have increased "tremendously" in the last few years, he said. Texas standards are close to the 19 recommendations of the federal commission on workers' compensation, Mr. Mankins explained. But due to the safety program, Eagle Trucking has managed to avoid the high rate of accidents that similar businesses have, at least over the last year, he said.

Another major expense in the Eagle Trucking Insurance program (despite a $2,000 deductible) is cargo insurance, a necessary item for a firm that hauls heavy drilling rigs from the oil companies in the East to the oilfields of Texas. "You have to have good personnel" to keep losses down in this area, Mr. Mankins said. One way that turnover is reduced is the company's non-contributory pension plan, established 11 years ago. Also, the company got back some of the premiums paid under the retrospective plan.

Besides a gold medal to the winner, Zurich-American Insurance Cos. donate $5,000 to the recipient's favorite charities. Mr. Mankins' prize will be split among the East Texas Treatment Center of the Epsilon Sigma Alpha March of Dimes Defects Center, the Shriner's Crippled Children's Fund and the American Cancer Society.

Mr. Mankins was nominated by Mel Copeland of the Copeland Insurance Co. in Longview, Tx.

The award winner started at his company as a truck loader, moved up to driver, and eventually became president and owner of the 40-year-old firm. He was responsible for widening the firm's business from servicing local oilfields to long distance oilfield and related hauling.

As state representative, Mr. Mankins is on the transportation and energy resource committees. He has no personal legislative projects in mind now, except "to be conservative and put the money where it belongs."

Perhaps the simplest yet most telling aspect of Mr. Mankins' community service is the annual Dial-A-Santa program that he sponsors, opening up Eagle Trucking's telephone lines to more than 1,000 children. When a child calls, the "Santa" who answers could very possibly be James Earl Mankins Sr. himself. ■

Shortage of nurses due to poor benefits

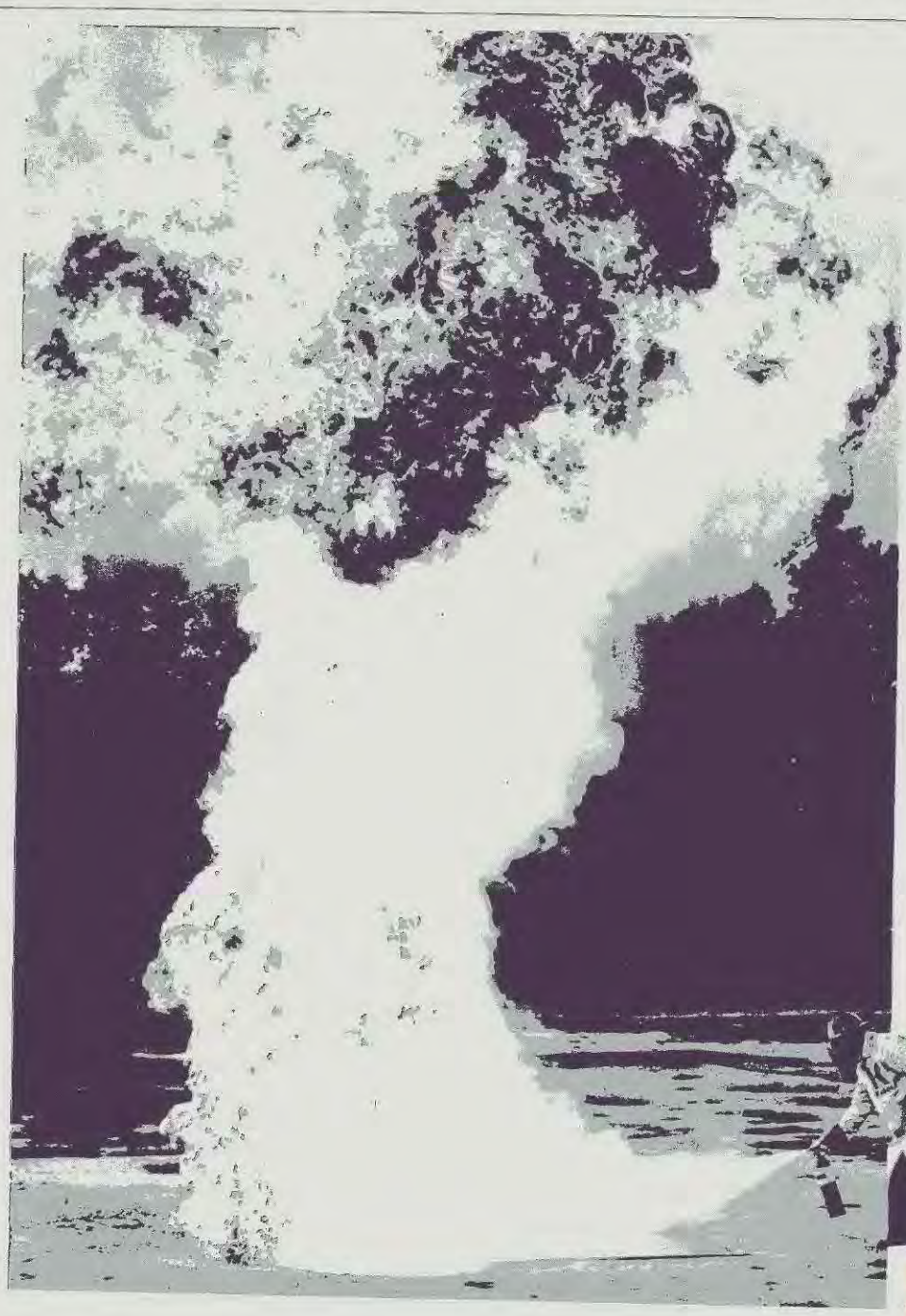
WASHINGTON—Poor fringe benefits are in part responsible for a critical shortage of nurses in U.S. nursing homes, a special Senate Committee on Aging reported last month.

A committee report on the nurse shortage cited studies that showed that among for-profit nursing homes, only 35% allowed sick leave, 22% allowed paid holidays, and only 12% hospitalization insurance.

By comparison, almost all nonprofit homes provided paid vacations, sick leave, paid holidays, and hospitalization insurance.

The committee said turnover among nurses at nursing homes ranged from 40% to 71%.

The committee report is entitled Nurses in Nursing Homes: The Heavy Burden (The Reliance on Untrained and Unlicensed Personnel). ■



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• A federal government publication, **The Selection and Application Guide to Fixed Surveillance Cameras,** is a guideline for the use of these devices to reduce shoplifting and help combat armed robbery and employe thefts. "Do I need these cameras?" and "How much does it cost?" are among the questions answered from the buyer's viewpoint. Copies can be ordered prepaid at 85 cents each by specifying GPO Stock No. 027-000-0281-1 and writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

• **Health Education Materials and the Organizations Which Offer Them,** published by the Health Insurance Institute, lists pamphlets and audio visual aids available from associations, business, government and other sources on health and related subjects. Single copies are available free by writing to the institute at 277 Park Ave., New York, N.Y. 10017.

• **Policy Options and the Impact of National Health Insurance,** a 55-page booklet prepared by the Rand Corp., is available for $3. Topics considered are the influence of national health insurance on the demand for medical services, how the system might adjust to market increase in demand, the benefits from an increased investment in health services and goals and strategies for formulating national health insurance policy. To obtain copies, specify order number R-1528-HEW/OEO and write to the Rand Corp., Publications Dept., 1700 Main St., Santa Monica, Ca. 90406. California residents add 6% sales tax.

• A pocket-size **Automotive Service Shop** safety manual is available to comply with OSHA-required employe training. It uses pictures to explain the rules on both high-frequency injuries and most frequent OSHA violations. A free sample copy and quantity prices are available from Dray Publications Inc., Deerfield, Ma. 01342.

• The 10th edition of the **Standard for Flexible Cord and Fixture Wire,** UL 62, has been published by Underwriters Laboratories Inc. The 99-page standard gives safety requirements for specific-purpose cords; oil-resistant, oil-proof, and water-resistant cords; and cords for outdoor use and those resistant to temperatures of minus 58 degrees Fahrenheit. Price: $3.50. Write to Underwriters Laboratories Inc., Publications Dept., 333 Pfingsten Rd., Northbrook, Il. 60062.

• The series of articles that have elaborated the cost aspects, vesting provisions, fiduciary standards, funding requirements, reporting and disclosure aspects and termination insurance provisions of the pension reform law is now available in print form to *Business Insurance* readers. Copies of single articles are $1 each; the entire series of six articles is $4. Checks, money orders or cash must accompany order, made payable to *Business Insurance*, 708 Third Ave., New York, N.Y. 10017.

• **Directors and Officers Beware!** is a brochure that describes directors and officers liability insurance offered by Employers Insurance of Wausau. The coverage is available to companies with assets in either the millions or the billions. For a copy of the free brochure write R. E. Fisher, director, sales services, Employers Insurance of Wausau, 2000 Westwood Dr., Wausau, Wi. 54401.

• **Facts and Fallacies About Your Company Fleet** is a 12-page illustrated brochure available from Emkay Inc. All major factors of a fleet operation are covered, including initial purchase, maintenance, licenses and taxes, cost predictability and hidden costs such as insurance and claims administration. For a free copy write the company, 6850 S. Cottage Grove Ave., Chicago, Il. 60637.

• Eva-Tone Co. offers **Sound for Better Company Communications,** a demonstration of how corporations use soundsheets to improve employe benefit communications. The material shows how benefit packages, profit sharing plans and retirement programs can be made more understandable. For a copy write the company, 2051 Waukegan Rd., Deerfield, Il. 60015.

• **Fire Protection Engineering** presents ECCO Service Inc.'s ability to assist the corporate insurance buyer, architects, contractors and engineers with fire protection design assistance, rate analysis and premium negotiation with insurance carriers. Free copies may be obtained by writing William D. Smith, president, ECCO Services Inc., P.O. Box 27128, Houston, Tx. 77027.

• **Excess Casualty Insurance** a new pamphlet from American Home/National Union, describes the excess casualty lines being offered by these companies. For a copy write to American Home/National Union, 102 Maiden Lane, New York, N.Y. 10005.

• Top national experts describe the ultimate in community emergency medical service from every aspect in **Emergency Medical Service Systems—A Community Challenge.** Communication, transportation, training, the emergency department and financial support is discussed in this brochure by Employers Insurance of Wausau and the Liberty Mutual Insurance Cos. For your free copy write Roger Drayna, Employers Insurance of Wausau, 2000 Westwood Dr., Wausau, Wi. 54401.

• Dow Jones-Irwin Inc. has published **Security Procedures for Computer Systems** by Charles F. Hemphill Jr. and John M. Hemphill. The authors have had wide-ranging crime prevention experience and are familiar with systems and software development. They are both senior consultants

with Wackenhut Systems Corp. The book is available at $11.95 per copy. Write to: Dow Jones-Irwin Inc., 1818 Ridge Road, Homewood, Ill. 60430.

• **Protecting Your People & Your Property** is a brochure describing the Diebold Inc.'s 12-24 security system, with its wide range of electronic protection options. For a free copy write Rod Saunders—Advertising Mgr., Diebold, Inc., 818 Mulberry Rd. S.E., Canton, Ohio 44711.

• Delta Dental Plans Assn. has published **Considering Dental Care Benefits for your Employes?** The pamphlet provides basic information on the subject of group dental insurance programs, methods of evaluating programs, definitions of dental services, information on utilization and cost and quality control in prepaid dental programs, and a brief description of the Delta Dental Plan System. For a copy write James Bonk, Delta Dental Plans Assn., 211 E. Chicago Ave., Chicago, Il. 60611.

• **Occupational Safety and Health Standards for the Construction Industry,** a Commerce Clearing House publication, reprints official standards issued by OSHA for the construction industry through June 3, 1974. Included are regulations for fire protection, equipment, storage, tools, ladders, cranes, motor vehicles and demolition. The subject matter index is OSHA-prepared. Cost is $2. To order, write: James Golden, Commerce Clearing House, 4025 W. Peterson Ave., Chicago, Il. 60646.

• Personalized replies via letter in answer to requests about group long-term disability plans for employers will be given to employers free of charge by Combined Insurance Co. of America. Write to Ralph Jensen, Combined Insurance Co. of America, 5050 Broadway, Chicago, Il. 60640.

• The captive insurance company situation in Colorado is the subject of a brochure by Richard N. Marchand, CPCU. Starting with a history of the legislation that allowed captives in Colorado, the booklet explains the reasons for the relatively slow establishment of captives there. The booklet's conclusion is a generally affirmative answer to the question of its title, **Will Captive Insurers Take to the High Ground?** For free copies, write to Richard N. Marchand, assistant vp, Cameron and Colby Co., 60 Batterymarch St. Boston, Ma. 02110.

• **Financial Report Series** is a series of risk cost reports showing total risk costs (insured and self-assumed) by line of coverage and risk group. Designed for financial managers, the reports summarize paid losses, recoveries, outstanding reserves and total losses. A free sample report is available from Corporate Systems Corp. by writing Marvin Gwinn, Corporate Systems Corp., Box 2827, Amarillo, Tx. 79105.

• **Restore** is a CNA Insurance program to return persons with permanent physical disabilities to their fullest usefulness: physically, mentally, socially and vocationally. The program is described in an eight-page pamphlet available from George Hamilton, CNA Plaza, Chicago, Il. 60685.

• The Computer Security Institute publishes a **Portfolio of Membership Services** which describes the institute's bimonthly newsletter and tells of research projects in progress, including a cost/benefit analysis of automatic fire suppression systems for computer facilities. For a free copy write John C. O'Mara, Computer Security Institute, Five Boston Post Rd., Northboro, Ma. 01532.

• Bankers Life Nebraska publishes a pamphlet entitled **Group Dental Insurance** which outlines the benefits available under Bankers Life Nebraska's program, with special emphasis on services covered and the types of plans and options which can be installed. For a free copy write Ken Tiekotter, group sales assistant, Bankers Life Nebraska, P.O. Box 81889, Lincoln, Nb. 68501.

• A descriptive brochure on the **Clark Thermadoor Cold Storage Fire Door** is available from the Clark Door Co. The brochure includes specifications and a graph charting the temperature rise of the door during the Underwriter Laboratories fire test. Free copies may be obtained by writing J. D. Bridge, Clark Door Co., 69 Myrtle St., Cranford, N.J. 07016.

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editorial opinions

A hurricane

THE CRISIS in medical malpractice insurance has reached hurricane proportions.

Item: Doctors in the San Francisco area have suspended services to all but emergency patients, protesting malpractice insurance premium increases of as much as 300%.

Item: One New England hospital's annual malpractice premium soared to $1 million-plus, a figure that will add as much as $2 to the daily room bill of each patient.

Item: A group of 400 New York dermatologists "with excellent professional liability loss experience" took a classified ad out in this magazine inviting insurance companies, agents or brokers with the facility to handle their insurance program to contact them.

Item: Four New York specialists with a combined practice will go out of business in June, when their current policy expires, unless they can find more reasonable malpractice coverage. Their policy renewal quote would have come to 24% of their gross income.

The list is endless. Many states, faced with what could become medical emergencies, are rushing to find solutions. As the Wall Street Journal noted the other day, however, "Lawmakers attempting to formulate remedies find themselves grappling with an issue of enormous complexity where passions run high, compromise comes hard and simple solutions are nonexistent."

In New York State, for example, a number of proposed remedies are being examined by lawmakers. The state's physicians say they will provide only emergency care after July 1 unless legislation is enacted to reduce the cost and number of malpractice suits. Gov. Hugh Carey, has put together a legislative package that would require personal liability insurers of all kinds to pool together to share the risk of writing malpractice. It would also shorten the statute of limitations, and would change procedures for weeding out incompetent physicians.

Most of the solutions being offered, however, only treat the inflammation; they do not remove the cyst.

It is our opinion that the medical malpractice problem will not go away unless there are some basic changes made to a system in which the pursuit of medical malpractice litigation has become highly rewarding.

The American Mutual Insurance Alliance's vp and general counsel Fred W. Beck, for example, declared that 50% of the contingent fees in malpractice cases are "patently unreasonable and excessive." (*Business Insurance*, May 5.)

Mr. Beck says that "such high fees simply escalate judgments to levels which are completely absurd. Today's sophisticated jurors know how much a plaintiff's attorney receives in (that) community, and so the jurors award high judgments to provide a specific net amount to the plaintiff."

Mr. Beck suggested that the following contingent fee system for lawyers is "reasonable": 50% of the first $1,000, 40% of the next 2,000, 33 1/3% of the next $47,000; and 10% of any amount recovered over $100,000.

Aside from the fact we're uncertain we would be as generous as Mr. Beck with the good attorneys, we do think the idea has merit.

One thing is certain. It behooves those dealing with the various malpractice flare-ups around the nation to attack the root cause of the problem—excessiveness. For if they don't the insurance "solutions" that are found will only be temporary. Pooling arrangements will solve nothing. Cost will continue escalating, ultimately ending up in the consumers lap in the form of higher insurance premiums and doctor's fees.

A no-fault stall

THE TIRES OF government spin exceedingly slow, and yet another spike has punctured the fiber of federal standards for no-fault automobile insurance.

President Ford, it appears, has taken a personal hand in the decision of his administration to oppose a federal no-fault plan. It's a stand similar to that of the predecessor administration, which was prepared to wait for the individual states to adopt the concept piecemeal.

The Senate passed a bill last year, but it died in the House. Senator Frank Moss (D.-Ut.), an architect of that measure, had hoped for administration backing this year. His measure would set federal standards for states to follow in setting up no-fault auto insurance plans. A federal plan would be imposed in states that did not adopt the standards.

What the concept needs most now, it seems, is a little boost from the federal government, for no-fault activity at the state level seems to have stalled.

We're committed to the concept of no-fault auto insurance as the most equitable way to make restoration for human and property losses resulting from motor vehicle accidents. Sen. Moss and others likewise committed should not be discouraged by the lack of support from the administration, for with due diligence we're certain no-fault will prevail.

On subscribing

ELSEWHERE IN this issue we note that readers who have been receiving *Business Insurance* on a complimentary basis will henceforth be asked to subscribe at a charge of $12 a year. To continue receiving this magazine without interruption, readers must remove the mailing label on page one of this issue and attach it to the coupon on page 9.

When *Business Insurance* began publishing almost eight years ago, we chose as our primary audience corporate executives responsible for the risk and employe benefits management within their companies or organizations.

So, we set about to establish a presence, to become an indispensible vehicle of information for the executive whose responsibilities cut such a broad swath—protecting corporate assets, both employe and property. We now feel we have attained at least one of our goals, that the corporate executive who reads us is a better informed executive.

The costs of publishing and distributing a newsmagazine in recent years have increased so dramatically that it has become virtually impossible to produce and distribute a quality editorial product without financial support from readers, so we are now asking readers for a modest $12 a year, less than 50 cents an issue, to continue receiving the magazine.

Subscription support from readers will help assure that the high standards of news reporting that readers have a right to expect of the only newsmagazine serving the field will be maintained.

letters

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

Seeks benefit info

To the Editor: I have been seeking information about employe benefit plans in order to compare them with the plan sponsored by the California Savings and Loan League. I need details about the cost of administering these plans, whether they are self-insured or insured. Also I am seeking details regarding the conditions under which eligibility is established and the waiting period, if any, after which benefits will be paid.

Not finding an adequate source of this information, I volunteered to prepare a questionnaire on the subject and to tabulate the results of the answers received. So far this questionnaire has gone out only to members of the Southern California Chapter of RIMS, but I would broaden its scope to employe benefit managers throughout the country who would like to respond to the questionnaire and, in return, receive a copy of the results. Therefore, if any employe benefit manager would like to participate in this survey, if he will write me at 409 Manford Way, Pasadena, Calif. 91105, I will send him the questionnaire.

Franklin Harding Jr.
Consultant to Employe Benefit Committee, California Savings and Loan League, Pasadena, Ca.

More on health cover

To the Editor: More on the editorial: "A Tactless Move."

Please make clear that "National Health Insurance," by itself, is a proposed funding process and is only one of several options to finance what is the real issue of proper national health care and its delivery to all Americans.

BI's position in the Editor's Note 4/7 issue was stated as ". . . that four out of four Americans should have catastrophic illness protection and, consequently, access to good medical care when an illness occurs." Consequently?

1. *Mathematics:*

	212	million people (Est. U.S. Population)
(—)	23	million—Medicare
	189	
(—)	15	million—Conservative
	174	estimate of those eligible for Medicaide
	135	million—Already
	39*	possess catastrophe health insurance

*39 million people still to be covered for catastrophe—but already

Continued on page 16

business insurance

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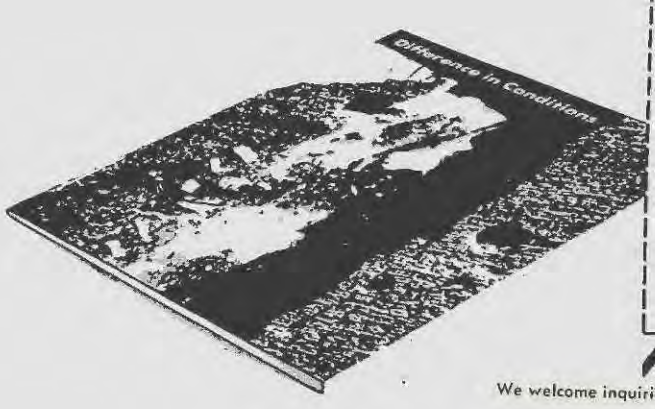
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letters

Continued from page 14

have basic Blue Cross or commercial.

2. Would anyone seriously dispute the catastrophic coverage of Medicare and Medicaide and, further, if these programs are deficient, the legislative ability of the government to upgrade the benefits and their availability?

3. The 135 million people already possessing catastrophe insurance is an industry published figure.

4. There is activity at the state level to mandate availability of catastrophe coverage.

5. The health insurance industry aggressively supports legislation at state and national levels.

The funding of catastrophe illness costs is availiable to more than 80% of the nation right now. Within five years that percent will approach 100%.

But to return to the main point: With 80% availability of funding, consequently, is the nation's health care also approaching such acceptable levels? Of course not! And the answer is not going to be found in mere insurance type funding.

It is time (long past time) for all of us to solve the real issues and quit hoping that a change in the funding process of acute health care problems will bring the solution. Big national insurance programs will not drive the rats out of the slums, destroy malnutrition, provide adequate housing, and educate people on proper health care maintenance. (Just to name a few of the pertinent issues.)

John Jans

Senior vp, CNA Insurance, Chicago, Ill.

Looking for insurer

To the Editor: Several months ago we started subscribing to your magazine and have found it helpful and informative. This came to our attention through an independent agent here in town.

At the present time we are involved in a self-insurance program for a benefit fund which is jointly administered. We previously had had several insurance companies working with us but because of the total advantages, have decided to be self-insured.

We are looking for coverage on a catastaphic or excess basis. That is to say that we feel that the fund needs to be properly protected by having insurance which would pay for any amount in excess of a particular agreed upon yearly figure. In reading your publication for the week of March 24, 1975 I noted reference to several instances where self-insurance had been followed by companies but there was no discussion of excess coverage or catastrophic insurance. We would be interested in hearing from companies that provide this type of insurance. Your cooperation in this regard would be greatly appreciated.

Daniel H. Mundt

Van Evera, Mundt, Koskinen, Clure & Andrew, Suite 700, Torrey Bldg., Duluth, Mn.

Founding Fathers

To the Editor: An addition to your piece on "foremost" risk managers: Some of the "emeriti" or "ex-s" should also be recognized. Three very important names from the "early" days are James C. Cristy (Upjohn), Russell B. Gallegher (Philco) and Henry Austin (Standard Oil, Indiana). Also worthy of mention are Casimir Z. Greenley (International Minerals), Charles H. Martin and Neill F. Crowley (both of American Cynamid), Gerard J. Rabbett (Pfizer & Co.), Roy A. Westran (Kaiser Aluminum), Frazier Wilson (United Airlines), A. Grant Whitney (Belk Stores) and J. T. Parrett (Carnation Company). These are "founding fathers," greatly responsible for early growth of both ASIM-RIMS and developments on buyer/user side in Insurance Division of American Management Association. From them also came development of the IIA Risk Management Certificate program.

Bob A. Hedges

Professor of Insurance & Risk, Temple University, Philadelphia, Pa.

Case of the dumbs

To the Editor: I read with interest the article entitled "UAW Official Charges Blues With Neglecting Needed Cost Controls" in the April 21st issue.

Mr. Bard Young must be either lacking in his ability to reason or is putting his fellow union members on.

Certainly the Blues are "tools of doctors and hospitals". Everyone will agree. But, if he expects the Blues to exercise any "cost containment" program, he must have an acute case of the dumbs!

To my personal knowledge, the unions have been selling the Blues because it was easy for their members to go into the hospital, have all necessary (?) work done, and be discharged without having to pay anything or be confused by insurance company claim forms. It was a real neat deal—employer paid the premium, hospitals and doctors charged what they could, and the Blues paid.

This arrangement will continue ad infinitum until the unions become responsible. As long as the employer pays the bill, and the union member is only responsible to pay what the Blues do not, there will be no changes.

Mr. Young, come on, try and be honest. Do you want your rank and file to actually pay something toward their medical bills? Or, do you expect the hospitals and medical people to take less because of the Blues?

James S. Skipwith, C.L.U.

Account executive, Daniell/Sapp/Boorn Assoc., Inc., Pittsburgh, Pa.

Amplification

To the Editor: The capacity shortage to which I referred in my Dallas speech (*Business Insurance*, May 5) was a reference to U.S. market capacity, not Lloyd's capacity as the story indicated.

I hope I made it clear to the audience that I am confident that we (Lloyd's insurers) have sufficient resources to meet expected increased demands for coverage.

My reference to reinsurance capacity was simply a personal opinion that I believe any domestic (U.K.) shortage in underwriting capacity will show up first in this field.

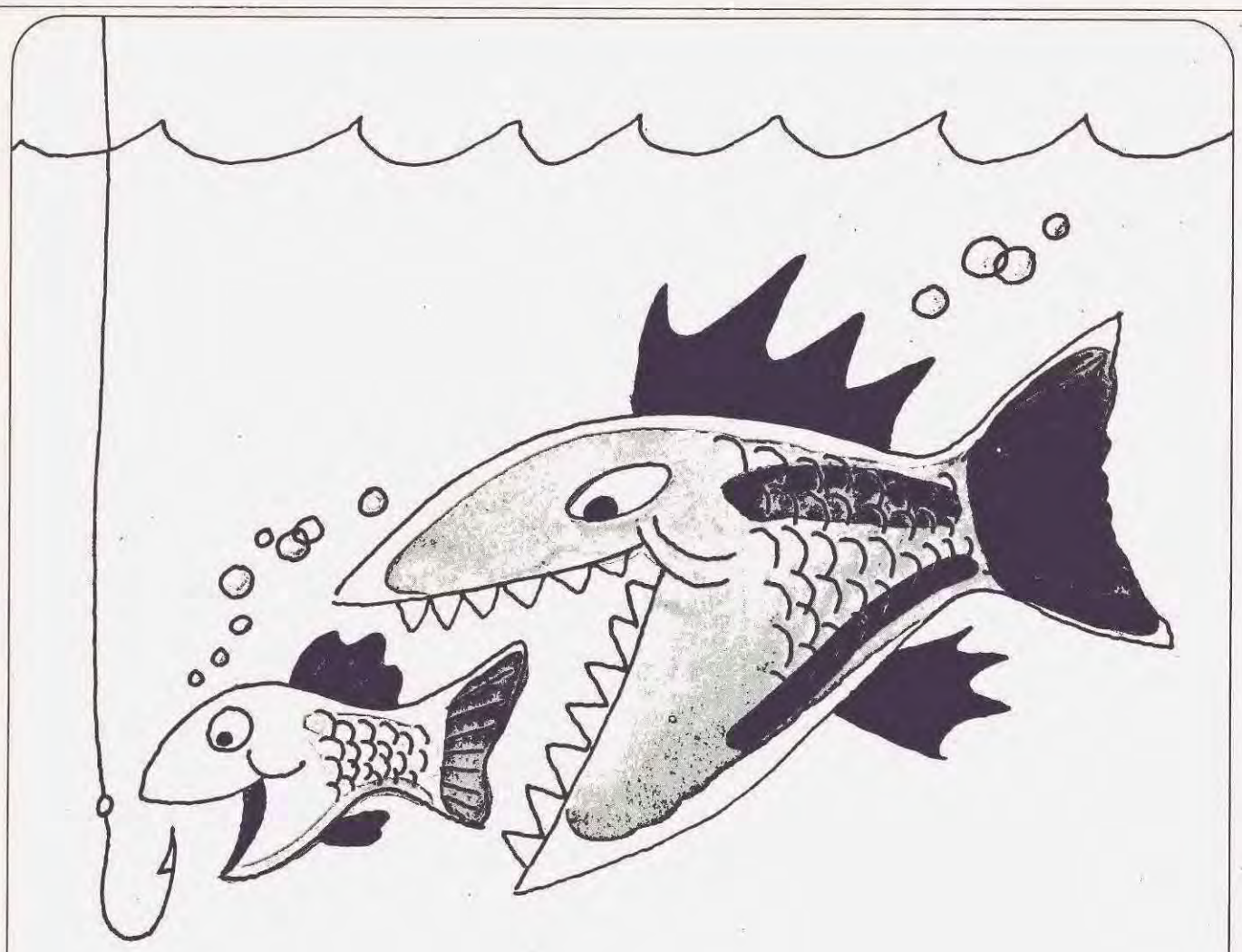
Leslie R. Dew

Deputy Chairman, Lloyd's of London, London, England

Editor's note: Our reporter, took care to ask Mr. Dew several specific questions at a press conference preceding the delivery of his speech in Dallas. She received every indication that Mr. Dew's comments reflected his views on capacity problems in general, and at Lloyd's, not just in the U.S. market.

Acquire All Risk Writers

Osterloh & Durham Insurance Brokers of North America Inc., headquartered in Van Nuys, Ca., acquired All Risk Writers Ltd., Chicago. All Risk Writers is a special risk broker which specializes in association programs. Osterloh & Durham expects the merger to strengthen its national service and marketing organization for comand group accounts.



Those who bite can get bitten

It's never hard to find a carrier who'll dangle a low-price in front of you.

Look twice. Be wary. Because large or small, the easiest way to cut a price way down is to cut service. If you're going to run the risk of poor underwriting—or inadequate engineering, claim service or loss control assistance—you'll be paying too much at any price. Not to mention the possibility of having a fat increase or a reluctant carrier on your hands at renewal time.

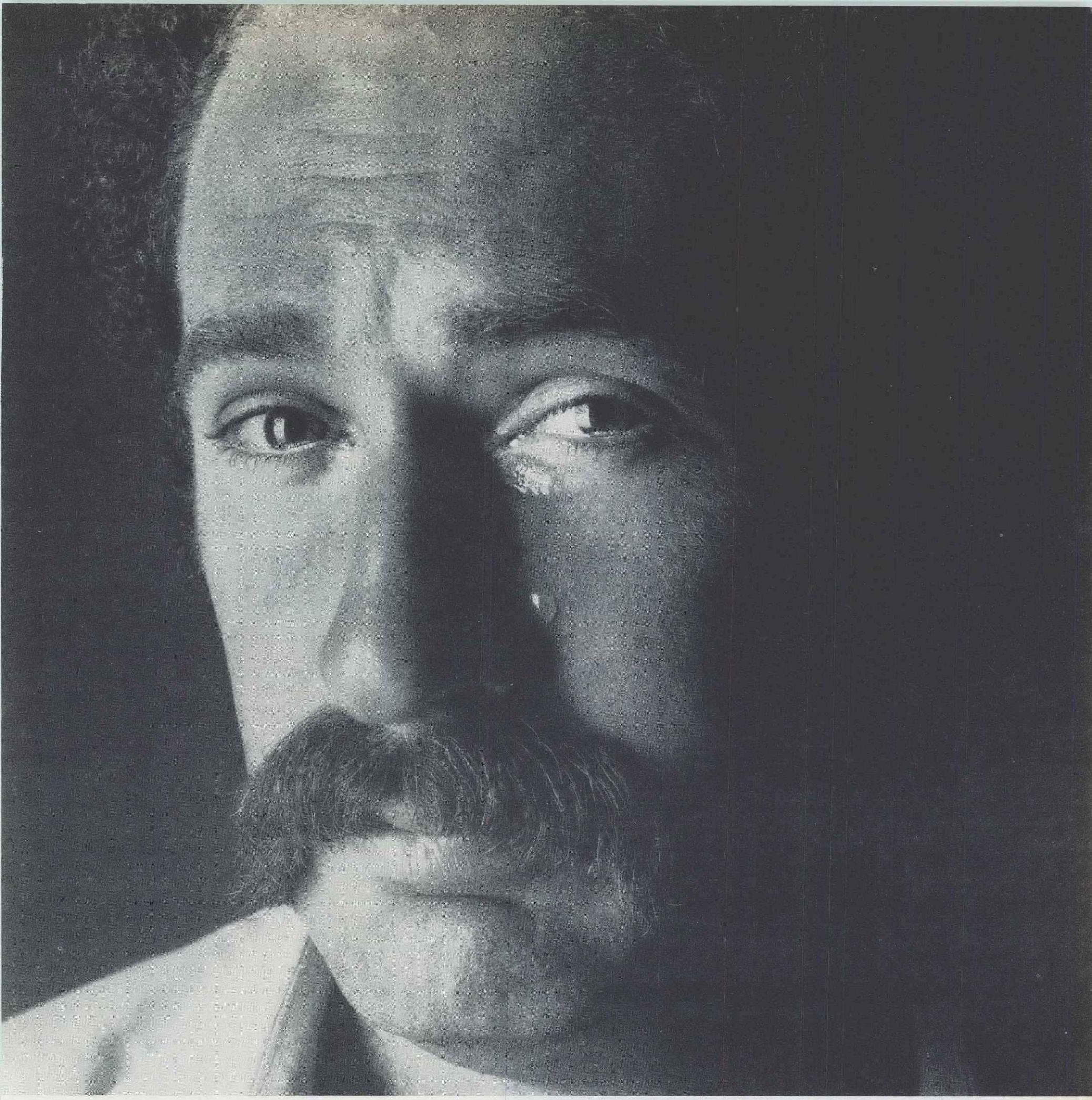
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Architects expect 100% increases in E&O premiums; no relief in sight

By MARIE KRAKOWIECKI

HARTFORD—Harry Danos is steaming. Over the past year, the liability insurance premiums for his small firm have gone up 100%.

Of course there is a reason. What sets the six-member Harry J. Danos & Associates apart from the mainstream of usual small business insurance woes is that it is an architectural firm.

And as some 9,000 architects and engineers can testify, the only thing going up faster than the buildings they design and construct is the cost of their liability insurance.

Architects' and engineers' errors and omissions insurance has become one of the touchiest and potentially explosive forms of liability coverage aside from medical malpractice. Some liability watchers are even predicting that this coverage, like malpractice, will become unavailable unless something can be done about rising costs and a legal climate favoring large settlements.

Meanwhile, architects like Herry Danos can expect little relief in their insurance costs—even if their claims experience is excellent.

According to one of the leading underwriting managers for errors and omissions policies for architects and engineers, premium rates in the last year soared 54% for the first $100,000 in coverage, and a full 100% for the next $900,000.

Coverage in amounts as low as $100,000 is now hard to come by, so the 54% estimate is academic, except for those with low limit policies that have not yet expired. Most architects and engineers can expect, like Harry Danos, to have their insurance premiums leapfrog the full 100%. In what are considered "problem" states, the increases may go even higher.

That is the word, anyway, from the Washington, D.C. firm, Victor O. Schinnerer & Co. subsidiary of Marsh & McLennan. Schinnerer acts as underwriting manager for Continental Casualty on CNA Insurance's architects' and engineers' E&O policies.

Schinnerer also happens to be the insurance consultant to the American Institute of Architects and the National Society of Professional Engineers. Through these affiliations, the firm administers a program that provides 7,000 architects and 2,000 engineers with primary liability coverage from CNA.



The Danos Firm was assoc. architect for the Hartford Civic Center.

Harry Danos is among the 9.000 insured under this program. While he calls Schinnerer the only organization now doing a good job of coordinating this specialized E&O cover, he peppers his faint praise with barbs. Highest on his list of complaints is the rate-making process for this type of coverage, based on a firm's income rather than its claims experience.

For the last five years or so, Mr. Danos' firm has worked almost exclusively on the new Hartford Civic Center, a large coliseum complex which has been a key part of the redevelopment of the downtown areas of the city.

The Danos firm was associate architect on the project, the contracts for which totaled around $55 million. Vincent G. Kling & Associates of Philadelphia was main architect on the Civic Center.

Some of the more spectacular features of the building included the largest excavation site in New England, a 7½-acre hole carved out of the middle of an urban area, and the largest clear span roof ever raised in one piece. Designed by the Kling firm, the roof was constructed on the ground, then hoisted a record 85 feet into position by four jacking towers.

Throughout the Hartford project, there was not a single claim made against Mr. Danos' firm for a liability loss he said. But that good claims record did not make a difference in keeping his insurance premiums down.

For the 9,000 engineers and architects insured through Schinnerer, rates are based primarily on each firm's billings for professional services rendered.

Mr. Danos feels this results in smaller firms bearing a disproportionate share of overall liability insurance costs, because he says the bulk of claims being levied are against larger firms.

"Many smaller firms are really suffering because the E&O premiums are not related to their responsibility. If a big firm has a lot of claims made against it, I wind up paying for it in the long run. Premiums are out of balance," he complained.

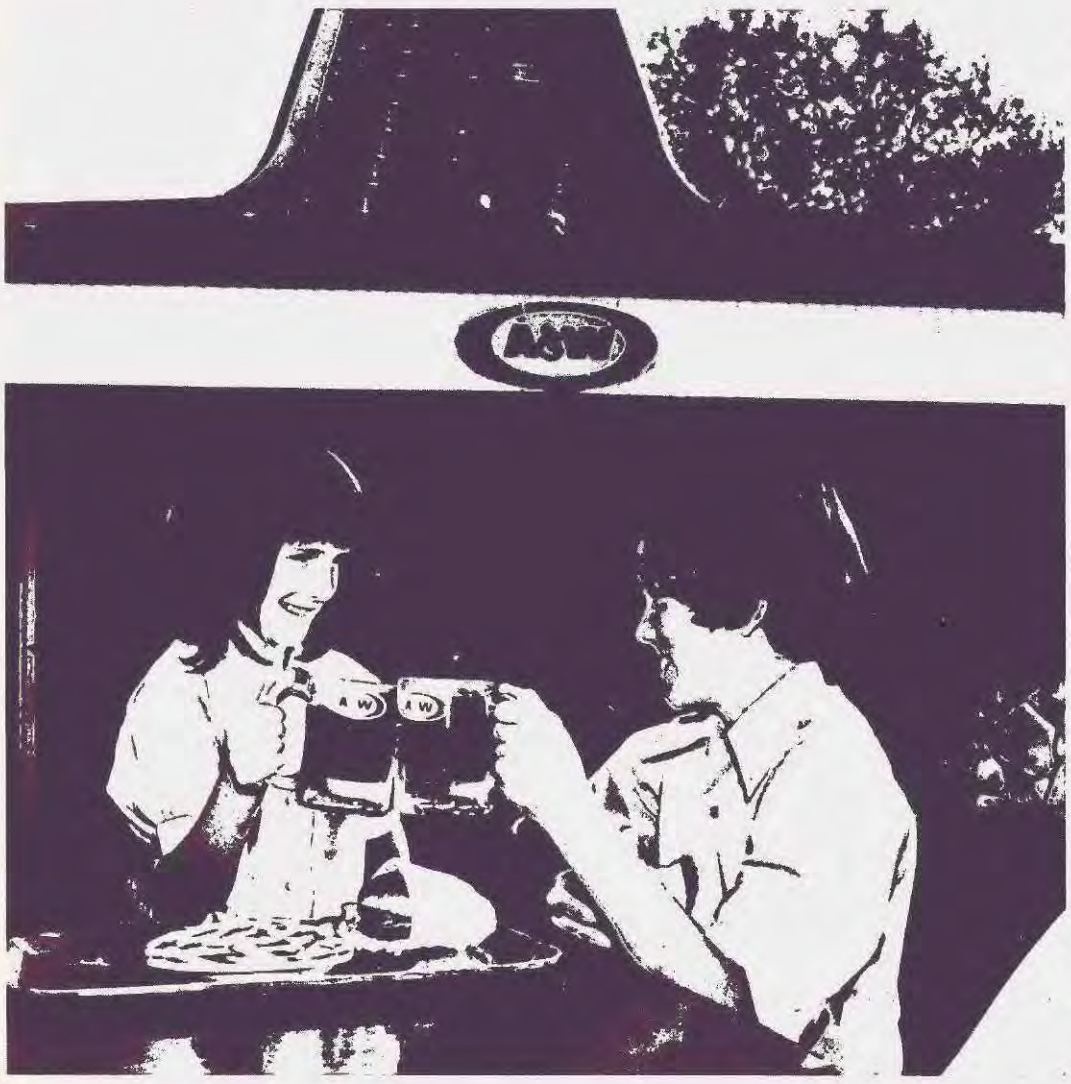
The coliseum portion of the Hartford Civic Center represented various contracts totaling $21 million. Mr. Danos would not reveal how much in billings that brought his firm, however.

And like most professionals in this area, he is reticent to release specifics on his coverage, for fear some opportunistic lawyer would seize on the information to exploit in a lawsuit.

The Kling firm, to which Harry Danos was directly responsible during the Hartford Civic Center project, flatly refused to discuss any aspects of its insurance coverage. Sources close to the firm have said Kling also uses the Vic-

Continued on page 19

QUICK SERVICE INSURANCE



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INSURANCE HOME COMPANIES

Home Insurance Companies

Continued from page 18
tor O. Schinnerer program for its liability insurance, however.

While Mr. Danos would not reveal specifics of his coverage, he estimates the lowest annual premium he knows of is about $3,000, and that he pays a rate in excess of that. He pegged a typical deductible at about $4,000 per claim.

An underwriting source at Schinnerer gave this magazine an overview of the kinds of policies, deductibles and limits that are available to architects and engineers through his firm's program.

Limits on his undertakings can go up to $10 million, with an excess arrangement worked out with the Midland Insurance Co. CNA's primary top limits are $5 million. For catastrophic loss coverage, the Midland Insurance Co. offers an excess policy totaling another $5 million, for the $10 million combined total.

At the other end of the spectrum, a small firm can get minimum limits of $250,000. "Until this year, the minimum coverage was $100,000, but we won't take on any new business for that low an amount. The new minimum is $250,000," the underwriter said.

He said deductibles vary greatly depending on the size of the firm, location and other factors. The smallest deductible he quoted was $2,000, or about half the figure mentioned by the Hartford architect.

Under the law, the degree of professionalism with which an architect or engineer does a job is called the "standard of care." Although the standard of care is the crux of a responsible professional's work, Harry Danos contends that present insurance ratemaking for errors and omissions coverage does not reflect it.

"The way things are now, standard of care is a minor consideration when they work out your insurance rates. It is not reflected in your insurance rates at all, and that's a shame. The problem as I see it is that claims have increased drastically as awareness of this kind of insurance grew. Yet even if you are careful to screen your risks, and maintain a high standard of professionalism, it just doesn't seem to matter."

The Schinnerer spokesman disagreed that a firm's claims experience had no bearing on rate setting. A good claims experience would make a favorable impact, he maintained. But he said certain states which were considered poor risk areas would automatically be levied a higher rate than others.

At one point in an effort to hold back his costs, Mr. Danos switched his liability insurance from Schinnerer to another insurer which offered lower premiums.

He said he can't remember that firm's name anymore, but he remembers one lesson about architects' and engineers' insurance that made an impression: Insurers are just as disenchanted with writing it as he is with buying it.

Shortly after he made the switch, the second insurance company announced it was losing money on architects' and engineers' insurance, and it dropped the entire line like a hot potato. Mr. Danos returned to Schinnerer, where his coverage remains.

While he may be unhappy with his premium boost, technically Mr. Danos and other architects and engineers in his position are not without channels for redress of their complaints.

According to E. G. Petrazio, administrator of the department of professional practice of the American Institute of Architects, the AIA's arrangement with Schinnerer gives the institute the right to audit and monitor the insurance policy of any member participant.

So if an architect has a complaint about insurance coverage, or believes rates have been unfairly levied, he or she could bring it to Mr. Petrazio's attention for investigation.

The arrangement serves as an industry watchdog, but as the rate jumps this year proved, it does not necessarily mean cost hikes can be moderated for architects' and engineers' liability.

A number of engineering groups have formed insurance companies to cover risks either now uninsurable or prohibitively expensive. There is the Design Professional Insurance Co., operating in 44 states for members of the Consulting Engineers Council; the Assn. of Soils Foundation Engineers Insurance Co. Ltd. in Bermuda; and Terra Insurance Ltd., also in Bermuda.

For the most part, architects and engineers seem to have few avenues for getting together and pooling their risks for lower insurance costs, except through the Schinnerer insurance program.

Mr. Danos' response perhaps provides the most understandable reason. "Pooling? I'm not really sure what you mean by that," he replied to a question. "And I think you'll find most other small architects don't understand that terminology either.

"Even if that's a way to save on insurance costs, you're not going to get a group of small businessmen involved in a kind of program they're not familiar with."

Mr. Danos stared at the two landscaped tree trunks outside his ground floor office. He paused just a moment before saying forcefully: "This whole area of liability bugs me personally. The business of insurance for architects and engineers has become almost a fad. As soon as it was discovered that we maintain what amounts to malpractice insurance, it was amazing how much claims picked up.

"It was no longer insurance, but a conscious avenue of attack." ■

Circus cover splits Jumbo loss 3 ways

MEDFORD, MA.—When Jumbo the Elephant went up in smoke last month in a Tufts University fire that destroyed assorted circus memorabilia of P. T. Barnum, three insurance companies shared the loss in a blanket $25 million policy.

The Insurance Co. of North America, Commercial Union Insurance Co. and the United States Fire Insurance Co., a Crum & Forster subsidiary, each wrote approximately a third of Tufts' property insurance.

The coverage was written on a replacement cost basis. While no damage estimates were immediately available preliminary estimates set replacement costs for the loss at about $2 million.

Dr. C. Russell De Burlo, Tufts treasurer, and the person responsible for buying insurance for the Medford campus, refused comment on policy limits or the value of the Barnum collection. He said, however, that everything lost in the blaze was fully insured.

Jumbo's fiery demise was his second exit from show biz. Nineteenth century circus king P. T. Barnum bought the elephant in 1881 from the Royal Zoological Garden. Jumbo wowed the crowds for three years, but died in 1855 after being hit by a train.

Not one to be daunted by death, Barnum had Jumbo stuffed and put on exhibit at Barnum Hall. Jumbo was on display there, along with circus posters and knickknacks, when the 91-year-old building caught fire. ■

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legal brief

Rules water damage was covered in all-risk policy despite exclusions

Here a tenant brought suit against an insurer under an all-risk policy for losses sustained when part of a foundation gave way and a portion of a building collapsed following heavy rains. The United States Court of Appeals for the Fifth Circuit ruled that exclusions from coverage in the policy for losses arising out of "water damage" or "earth movement" were inapplicable to the undermining and consequent collapse of a portion of a building resulting from the work of run-off water washing away uncompacted fill dirt from beneath the building's foundation.

Peach State Uniform Co. (Peach State), the tenant of the Peach State Building in Atlanta, lost personal property after heavy rains caused part of the building foundation to give way and a portion of the building collapsed. Peach State had an all risk insurance policy issued by American Insurance (American) Co. covering the building. The policy did not insure against loss or damage resulting from the following: water damage caused by flood, sewer or drain back-up, or water below the surface of the ground; and earthquake, volcanic eruption, landslide or other earth movement.

The abstracts published in this column were prepared by Cases Unlimited Inc., Evanston, Il.

Peach State brought this action against American to recover its losses. The trial court ruled in favor of American. On appeal American contended that the water exclusion referred to any sort of damage stemming from the enumerated water sources. However, the court rejected this argument, pointing out that such an interpretation would effectively eliminate the adjective "water" from the exclusion.

The court concluded that it was clear that the term "water damages," in the context of this policy, constituted a "limitation on the sorts of damages from the *enumerated* waters which were excluded from coverage." Since the loss here was not within the "waters" enumerated in the policy the court believed that the exclusion was not applicable.

The court also believed that the phrase "other earth movement" was ambiguous and, as such, the ambiguity was to be resolved in favor of Peach State. The court stated that the words "other earth movement" referred "only to phenomena related to forces operating within the earth itself, and not to the merely superficial effects of external forces . . ." This the court concluded that the second exclusion was also inapplicable to the loss in this case. *Peach State Uniform Serv.* v. *American Ins. Co.*, United States Court of Appeals for the Fifth Circuit, February 7, 1975, Goldberg J. (BI/01/My.—$2).

Aviation liability

In a suit to recover under an aviation liability insurance policy, a Texas appellate court has ruled that it would not be a reasonable construction of the policy involved here to conclude that the renter pilot was an insured under the policy. The policy provided that "any person operating the aircraft under the terms of any rental agreement or training program which provides any remuneration to the named insured for the use of said aircraft" was not an insured. However, the part of the policy that it was claimed created an ambiguity or uncertainty as to whether "renter pilots" were insureds read:

"6. Purpose(s) of Use: The aircraft will be used for the purposes indicated by 'x'....'x'(c) 'Limited Commercial.' The term 'Limited Commercial' is defined as including....Rental to pilots...."

The court believed that the effect of the purposes of use provisions was to provide that the loss covered by the policy had to arise out of certain named uses, and that one such use was "rental to pilots." In other words, the purposes provision of the policy merely made it clear that the named insured's coverage for its negligence as a lessor not in possession of the plane was not forfeited by permitting a renter pilot to use the plane.

Furthermore, the court pointed out that the purposes of use provisions permitted the named insured to recover under the policy for damage to the airplane itself in instances when such damage was sustained while the aircraft was in the hands of a renter pilot. "It is not the purpose or the effect of the purposes of use provisions ...," the court stated, "to designate who is or is not an insured under the policy."

Its only purpose, the court emphasized, was to protect the named insured while the aircraft was rented out. Consequently, the court concluded that the provisions involved were not intended to and did not make a renter pilot an insured under the policy. *Melton* v. *Ranger Insurance Company*, Court of Civil Appeals of Texas, October 18, 1974, *rehearing denied* November 15, 1974, Brewster J. 515 S.W. 2d 371 (BI/04/M.-$2).

Fire Insurance

A U.S. appellate court has ruled that failure to repair and replace lost property and expend an amount in excess of the agreed cash value of the loss did not comply with the conditions precedent to recovery under the replacement cost endorsement of a fire insurance policy issued by Aetna Casualty & Surety Co. The insurance policy in question covered loss by fire to a certain shopping center property located in Denver, Co. Fire destroyed a major portion of the shopping center structure and Aetna thereafter paid to the insureds the agreed cash value of the loss, $631,955.

Aetna argued that the $631,955 was all that it was required to pay under the policy and, indeed, was all it ever agreed to pay. The insureds argued that they were entitled to recover an additional $54,920 and supported their assertions with two arguments: first, that the insurance policy's "replacement cost endorsement" entitled them to that additional sum; and second that Aetna agreed to pay $686,875 and therefore the ad-

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ditional $54,920 was due because of "contract by estoppel." Both assertions were rejected by the court.

The insureds had expended $510,759.88 in partially repairing and replacing the structure. Aetna had already paid to the insureds $631,955. The insureds claimed that neither full replacement of the property nor an expenditure of more than the cash value of the loss was necessary in order for the replacement cost endorsement to come into play.

The court disagreed and concluded as a matter of law that the insureds were not entitled to recover under the replacement cost endorsement of the insurance policy. The court emphasized that the insureds understood the settlement agreement to be in accordance with the provisions of the insurance policy and the replacement endorsement. According to the plain terms of the contract, the insureds were required to spend an amount in excess of $631,955 in repairing and replacing the damaged structures before they could recover an amount due them under endorsement.

According to the court, there was no further amount due the insured because the "undisputed facts" established that an amount less than $600,000 was spent in the repair and replacement of this shopping center. *Kolls v. Aetna Casualty & Surety Co.*, U.S. Court of Appeals for the Eighth Circuit, October 16, 1974, Stephenson, J. (BI/05/A.-$2).

Performance and payment bonds

This was an action on a performance and payment bond executed by an insurance company as a surety. The U.S. Court of Appeals for the sixth circuit ruled that the company, which was aware of construction problems involved and which refused repeated invitations to discuss them, was not released from its obligation on the bond on a mere technical breach of the surety contract which did not result in damage or prejudice to it.

Diversified Engineering & Sales Corp. (Diversified) had agreed to build a nursing home for the Winston Corp. (Winston) at a cost of $752,874. The construction contract required Diversified to obtain a performance and payment bond from an acceptable bonding company. Diversified purchased a bond from Continental Casualty Co. (Continental) for a premium of $6,444. In addition to protecting Winston from Diversified's failure to perform, the contract gave Winston authority to terminate the contract on seven days written notice if Diversified was found guilty of a substantial violation of any provision of the contract.

The contract required completion within 300 calendar days after commencement of construction. Upon expiration of the 300-day period the building was far from finished. Continental had watched the developments and was aware of the construction delays and problems. Winston met repeatedly with Diversified. Continental was asked, on several occasions, to attend these meetings but refused.

Finally, Winston and Diversified entered into a letter agreement designed to accelerate construction. The agreement permitted Winston to take possession of the premises and to assume construction of the project. The agreement specifically stated that it did not "modify or change the existing bond on the project which exists for the owner's benefit." On the same day Continental was advised by telephone of the agreement and a copy was mailed to it. Shortly thereafter Winston took over the construction, completing it in October, 1969, twelve months after the scheduled completion date. Winston then submitted a claim to Continental on the performance and payment bond which Continental refused to honor. The trial court then ruled in favor of Continental.

On appeal Continental contended that it was discharged as surety because the later agreement between Winston and Diversified was a new contract to which it had not consented. Furthermore Continental alleged that Winston had failed to give it the seven days written notice required by the contract before terminating the employment of the contractor and that this released Continental from its obligation.

The appellate court ruled that by the very terms of the contract to which Continental agreed, Winston had an absolute right to terminate the employment of the contractor and to assume the construction of the home itself. Consequently, the court concluded, even if the subsequent agreement was a termination of the original contract it was contemplated by the contract and thus was more accurately an implementation of one of the contract provisions to which Continental was still bound.

The court also concluded that since Georgia law was not settled on the question as to whether both a compensated and an uncompensated surety were released from liability for an alteration or minor technical breach in the primary contract, such as the failure here to give the written seven day notice, it could, therefore, exercise its judgment based upon other applicable principles of state law.

Thus, the court ruled that Continental was responsible as a surety because, in its opinion, under modern American surety law, "a mere technical breach of a surety contract, not resulting in damage or prejudice to the surety, will not release it from its obligation." *Winston v. Continental Casualty Co.*, U.S. Court of Appeals for the Sixth Circuit, January 17, 1975, McCree, J. (BI/01/A.-$2)

(Copies of the entire decisions described in this column may be obtained by writing to Business Insurance, *attn. Managing Editor, 740 N. Rush St., Chicago, Il. 60511. Please enclose a $2 check made out to Case Unlimited Inc., for each case, and specify the code number of the opinion, which is at the end of each brief.)*

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Advise early, careful negotiations for employers choosing an HMO

By ELISABETH M. WECHSLER

CHICAGO—Health Maintenance Organizations (HMOs) will eventually create competition for doctors and hospitals which will make a difference in the quality of health care that's delivered, a management consultant predicted.

Medical malpractice claims are low statistically with an HMO group practice, said Robert Gettys, who heads his own management consulting firm in Albuquerque. "There are a greater number of board-certified physicians with HMOs," he told *Business Insurance*. "The group instinct for doctors is to upgrade their practice."

Negotiation with an HMO is the most important step, according to panelists participating in a recent conference on HMOs sponsored by Charles D. Spencer & Associates Inc. at the Hyatt Regency O'Hare here.

"The best way to negotiate with an HMO is to start early. Don't wait until 90 days before the deadline," advised Jack Ziegler, employe benefits manager for Caterpillar Tractor Co. He referred to the federal law which permits an employer 90 days after being approached by an HMO to choose a program.

"You might want to influence the type of HMO which comes into your community,' Mr. Ziegler added. He said Caterpillar has taken an active role in its home-based Pecria, along with community officials, to determine what type of HMO program best suits the city's needs.

"If Caterpillar can help an HMO get started, it will be in a better position for having a say in the matter," he added.

With nine million federal employes, Marie Henderson of the U.S. Civil Service said about nine months is required to investigate an HMO proposal for government personnel. "Ninety days is lunatic," she said.

"Whether an employer is doing it on a voluntary or mandatory basis, negotiation is important. How do we guarantee that these kinds of things will happen?" asked Charles Bredesen of Northwestern National Life Insurance Co., Minneapolis.

"An HMO should show you how it plans to manage its risks and costs," he continued. "It should get into the details such as controls, risks, rewards, relationships with hospitals, etc."

"Look at the emergency care proposed. Do they have emergency rooms at hospitals? Are doctors contacted directly?" Mr. Bredesen asked.

A basic plan has physicians and some specialists in-house with doctors on referral, he said. "It's not efficient health care if a patient is shuffled around to several referral locations," he said.

"Is the solicitation on a 24-hour basis, year round? Make this an item of negotiation," Mr. Bredesen advised.

"The experience of HMO management is weak in many instances. An employer should explore this," he said. "Find out if you han set up a common administration system on your terms."

Another reason for being critical in negotiations, according to Mr. Ziegler, is that "you're responsible for the service provided by the HMO."

"You must have an emergency mechanism in your contracts with HMOs which allows a dissatisfied employe to switch to another type of plan," Mrs. Henderson said.

"Discuss the possibility of insolvency and how complaints would be handled," Mr. Ziegler said. He recommended that companies start compiling statistics now that they would need in evaluating an HMO proposal.

"It's important to keep straight new HMOs," Mr. Bredesen said. "Well-established HMOs don't need any help. You'll have to hustle them," he said.

"It's imporant to keep straight the two kinds of HMOs," said Don Simpson of Hay Associates. "There's the individual practice option and the prepaid group practice."

Group practice prepayment plans "require an enormous amount of front money," Mr. Simpson continued. "You must have doctors' offices and pay the doctors whether or not they're busy. You also upgrade the practice of care because full treatment and diagnostic care is given."

Comparable care "is just as expensive but it depends on particular factors," said Mr. Simpson, who formerly worked for Kaiser Industries, the California-based corporate pioneer of HMOs.

"It's easy to write an insurance program with the same benefits as an HMO program but not in a cost-effective way like an HMO," Mr. Bredesen said.

Mrs. Henderson of the U.S. civil Service emphasized that HMOs are more expensive than alternative health benefit plans. "Private industry will have higher administrative costs than those for the government," she pointed out. "Benefits under an HMO will cost more than a fairly decent insured plan."

Mr. Simpson disagreed somewhat with that view. "HMOs will cost more in the short run, but costs will go up for anything anyway (in the long run)," he said.

Mr. Bredesen of Northwestern National Life said insured plan increases were about 10% to 12% in Minneapolis last year, while HMO cost increases in that city ran about 5% to 7%.

"In the short term, you're increasing the cost of medical care," said Hays's Mr. Simpson. "Eventually the appropriateness of treatment guidelines can reduce the cost or make it level out."

He commented that several years ago a typical insurance plan in California cost $6 to $8 a month per employe, while Kaiser's HMO cost $10 to $12 a month per employe. Now, he said, it's $40 or $50 a month per employe for an insured plan and $60 to $80 a month for an HMO.

"As inflation and utilization problems develop, a well-run HMO plan will be able to control its costs," Mr. Simpson believes.

The question of medical malpractice liability to the employer sponsoring an HMO was raised. Mrs. Henderson pointed out that "no medical malpractice liability has occurred" for an HMO sponsor, but she suggested a disclaimer be written into the HMO contract to protect the employer.

Mr. Ziegler of Caterpillar said "the liability is from an employe relations standpoint rather than a legal one," but an unidentified member of the audience challenged him by saying that under the Employe Retirement Income

Continued on page 23

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Opry House flood finds dike, policy limit too low; coverage raised 10-fold

By PAUL R. MERRION

NASHVILLE—The flood at the Grand Ole Opry House last March 13 spurred its owner to raise the coverage for flood damage to $10 million from $1 million—and they're thinking about raising the dikes, too.

Eleven inches of rain fell in the three days before the night of the flood, causing the Cumberland River to overflow the dikes and the expectations of the U.S. Army Corps of Engineers and the owner, The National Life and Accident Insurance Co. here.

The dikes which surround three-fourths of Opryland Park were built at elevation 418, two feet higher than what the army engineers had said was the "maximum regulated flood of record," according to Valentine Smith, vp and manager of the insurance company's real estate department. The maximum regulated flood of record is now elevation 419.5.

He said losses from the flood were "substantially covered" by the $1 million flood limit in the $5 million difference-in-conditions policy written by Appalachian Insurance Co., Johnston, R.I., a subsidiary of Allendale Mutual Insurance Co. There was a $5,000 deductible, Mr. Smith said.

In April, National Life acquired new DIC coverage because Appalachian's aggregate annual coverage had been exhausted and "we saw what could happen," the vp said. The Grand Ole Opry House now has 10 times the amount of flood insurance it had before, in three layers:

The first $1 million is insured by Lloyd's of London, Mr. Smith said, with "somewhat higher" premiums than Appalachian charged on its coverage. Also, the deductible was raised to $25,000, he said.

The next $4 million is written by Boston's First State Insurance Company, a member of the Hartford Insurance Group. Northbrook Insurance Co., a member of the Allstate Group located in Northbrook, Il., carries the top $5 million.

The new policy has a lower permium per dollar of coverage, Mr. Smith said, even though the total expense is higher.

The Grand Ole Opry House's owner is currently studying the possibility of raising the dikes to provent another flood. The army engineers told National Life that the maximum flood that could take place before the dams upstream overrun—a "standard project flood"—would be at elevation 426, Mr. Smith said. The army said the highest unregulated flood of record (before the dams were built) was "424 or 425," he said.

"We either have no water or 12½ feet," Mr Smith said. National Life has hired a local consultant engineering firm, Barge, Waggoner & Sumner, to study the possibility of raising the dikes, but he admits that it will "take quite a while to find out" the feasibility and costs of such a project. The consulting firm did the original engineering work on the Opry House, Mr. Smith added. ■



Opryland losses "substantially covered" by D&O policy.

HMOs . . .

Continued from page 22

Security Act (ERISA) "any irresponsible action could be sued."

"The employe relations factor overrides the legal factor concerning HMOs," Mr. Simpson said. "Communications are extremely important because it's an emotionally charged issue."

"The power of the incumbent plan is great,' Mr. Simpson added. "Estimates for HMO enrollment outside California (where the HMO concept is broadly accepted) are not likely to be as optimistic as some people think," he said. He predicted initial HMO group practice enrollment in most states would be only 10% or 15% of eligible employes.

"HMOs can't succeed if they follow federal guidelines completely on the question of community rating and open enrollment," Mr. Bredesen said. "You can use an average age figure for subscribers but you may get a distortion on what's average. Younger people won't participate because it's too expensive and older people will participate still more because it's cheaper."

"Assess the location of various HMOs," Mr. Bredesen continued. "A 30-minute distance is okay unless there are many doctors' offices and hospitals closer than the HMO."

"It's better to have four to six HMO care options at one location so the employer can give the employe several choices. They can be explained and administered easily," Mr. Bredesen said.

"Preventive medicine often is looked at as the key to choosing an HMO," he said. "The opportunities for preventive medicine are there, but they're largely unproven."

"You can cut down on employe turnover or absenteism but don't base your decision to go with an HMO on this reason," Mr. Bredesen advised. ■

Flying tigers. *Meet Lee G. Barnes and a squadron of his "flying tigers" from the Sky-Life camp near Edinburg, New York. ☐ Lee, a former Navy and commercial helicopter pilot with over 10,000 accident-free hours, founded Sky-Life in 1963. It's the nation's oldest flying camp and the first one designed for the purpose of teaching youngsters to fly. ☐ To date, Lee has graduated over 250 licensed teenage pilots. Over sixty of his students have soloed on their 16th birthdays; many have gone on to earn higher ratings, and not a single one has ever had an accident during or after his Sky-Life training! ☐ Lee is justifiably proud of Sky-Life's safety record, but he's prouder still of the boys themselves. "They've made this camp what it is today", he says, "they built it, they run it, and they believe in it." ☐ USAIG believes in it too. We have insured Sky-Life from its inception and we are proud to be sharing in its growth and progress.*

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Fortune benefit survey sees self-insurance rise

NEW YORK—Although self-insured employe benefit programs are increasing among medium size companies, the rate falls short of large corporations' use of the practice, accordng to a Fortune magazine market research study.

Following up a study of the employe benefit programs of the top 1,000 industrial corporations (*Business Insurance* March 10), Fortune similarly surveyed companies with 100 to 499 employes.

Response to the survey by the medium size companies was "unexpectedly poor," the report noted, with a response rate of 35% compared with a 62% response rate among the top 1,000 corporations.

The response rate coupled with comments made by survey respondents suggests employe benefits are held in somewhat low regard by executives of medium size companies, the study noted.

The survey showed some similarities between medium size companies and the top 1,000 corporations in the administration of benefit programs.

Both groups are increasing self-insured benefit programs, or plan to use self-insured benefit programs in the future. Among the top corporations, increases are planned by 44% which already self-insure some programs and by 20% of those companies which do not yet self-insure.

Only 5% of the medium size companies self-insure any of their benefit programs, according to the survey, but 20% said they plan to increase self-insured programs within the next five years.

Half of the medium size companies said they changed underwriters for insured benefit programs at least once in the past five years, a response that paralleled the experience of the large corporations.

Group major medical was the coverage most often shifted (54% of the medium size companies changed carriers for it in 1973 or 1974), followed by basic group health (49% shifted this coverage in 1973 or 1974).

Lower premium/cost was cited as the reason for the shift in carriers by 73% of the respondents; improved coverage was the next most popular reason (cited by 26% of the respondents) and 14% cited improved claim service or processing as the reason for changing underwriters.

As was the case with the larger corporations, long-term disability and group dental plans were among the most recently added benefits. The former was the most recent addition by 16% of the survey respondents, the latter was the most recent addition of 10% of survey respondents.

Since 39% of the medium size companies which answered the survey had no answer to that particular question, the report noted that the true levels are undoubtedly greater than those shown.

On the average, medium size companies surveyed provide their employes with 4.6 coverages, the most common being major medical and group health.

The fixed cost method was the most predominant means of financing benefit coverages (57% of the companies use it for term group life, 56% for whole group life, 56% for basic group health, 55% for long-term disability and 54% for group major medical.)

With the exception of Blue Cross, no underwriter seems to have established a major share of the market among medium size companies in terms of the number of present customers, the Fortune study noted.

Among underwriters listed as being used for benefit policies or for administrative services only, Blue Cross was named by 25% of the survey respondents.

Other underwriters named include (percentage of respondents using them follows in parenthesis): Connecticut General (10%), Travelers (10%), Aetna Life (9%), Prudential (6%), The Bankers Life (5%), CNA (5%), Equitable (5%) Hartford (4%), INA (4%), Massachusetts Mutual (4%).

Of 31 underwriters listed by the survey respondents, only 2.8 on the average, were associated with "better than average service."

Blus Cross was named by 28% of the respondents as providing better than average service, followed by Aetna and Travelers, named by 19% of the respondents. However, 27% of the respondents had no answer for the question.

Favorable reputations for pricing on employe benefit programs are even scarcer than those for service, the Fortune study determined.

Blue Cross is associated with "better than average pricing" by 18% of the survey respondents, followed by Connecticut General and Travelers (each named by 7% of the respondents).

However 13% of the respondents associated no benefits underwriter with better than average pricing and 37% had no answer for the question.

More than half the medium size companies surveyed (54%) said they deal with brokers or consulting firms.

The Fortune study offered a list of 11 brokerage houses and asked medium size companies to name brokers they were familiar with and which of those they had "favorable" opinions about.

The respondents named these firms in descending order: Marsh & McLennan, Alexander & Alexander, Johnson & Higgins, Fred. S. James, Frank B. Hall, R. B. Jones, Rollins Burdick Hunter, Corroon & Black, Synercon, Schiff Terhune and Bayley Martin & Fay.

Only half the responding companies (52%) reported having a pension plan and 41% said they have profit sharing. One of every five companies has no financial benefit program for its employes. ■

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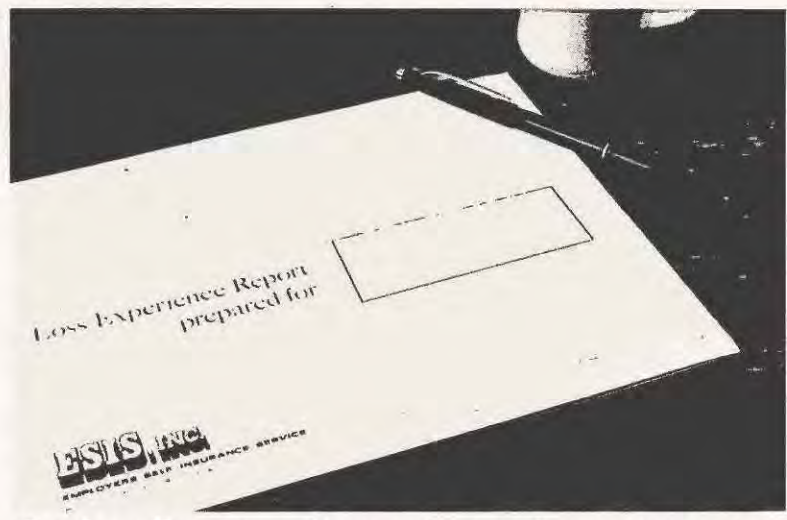
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'Obey spirit of rehabilitation law,' employers told

By JOANNE GAMLIN

ANAHEIM, CA.—California's new mandatory rehabilitation law, A. B. 760, will attempt to place rehabilitated employes into new jobs which are in the family of occupations they held prior to being injured, according to James Zelko, field claims manager, Employers Insurance of Wausau.

Mr. Zelko was speaking at a seminar on mandatory vocational rehabilitation, held during the 22nd annual Western Safety Congress. The three-day event was sponsored by the Greater Los Angeles Chapter of the National Safety Council.

Mr. Zelko pointed out that the Rehabilitation Bureau, established by the law, "will have almost exclusive jurisdiction over matters relating to rehabilitation."

He cautioned employers to pay heed to the spirit of the law which he defined as the reasonable return of the injured employe to gainful employment.

Employers with workers who were injured prior to January 1, the effective date of the new legislaton, and who ask for rehabilitation should take a long look at such appeals, he indicated.

"If the law is interpreted to be procedural by the California Supreme Court, it could be that any case occurring prior to January 1 will be eligible for the benefits of A.B. 760," he suggested.

Employers who attempt to bypass the law by keeping the employe working in a different job or in a new, especially created job had better be prepared "to retain that employe until he or she retires," Mr. Zelko pointed out.

He explained: "If an employer uses the new job as a means to evade the law and at a later date terminates the employe or discontinues the job, he will still be liable to the employe for that worker's rehabilitation benefits", he said, adding:

"Furthermore, I feel strongly that anyone doing this would be in contempt and subject to a penalty as well as possible punitive damages."

Mr. Zelko urged employers to recognize injured workers who qualify for rehabilitation as early as possible. One advantage to the employer of early recognition of the need for rehabilitation is that the long period of paying out $119 a week as compensation for a permanent disability can be avoided, he said.

He advised employers who might be tempted to use a compromise and release for employes who elect to waive their rehabilitation rights that in his opinion "the days of C&R are numbered."

In those cases where an employe truly does not want his rehabilitation rights, Mr. Zelko recommended that employers make sure the Rehabilitation Bureau makes a disposition of the issue and puts its decision in writing.

No statute of limitations yet governs A. B. 760. However, Mr. Zelko said he is betting that a five-year statute of limitations will be applied until there is a legal precedent for something else.

On-the-job training is part and parcel of the rehabilitation process, Dee Pearsall, rehabilitation nurse, Employers of Wausau, told the audience. When screening for rehabilitation personnel, she recommended that employers concentrate on applicants who boast three characteristics: A bachelor of science degree, three to five years of rehabilitation experience and an active California rehabilitation license.

Saralea Altman, consultant for the program for the industrially injured, California Department of Rehabilitation, suggested that industry adopt an "affirmative action" program aimed at disabled workers. A program of "work modification, whereby job tools are altered—a lowered work bench, for instance—was proposed by Ms. Altman.

Roy J. Bell, administrative director of the workers' compensation appeals board, Department of Industrial Relations, in a noontime address entitled 'Workers' Compensation-Challenge 75, called A. B. 760 the most important change in workers' compensation in 40 years.

"The most significant part of the new law," he said, "is that it requires that employers and underwriters talk to the injured worker and make him understand his role in rehabilitation." ■

Omission

Business Insurance inadvertently omitted the brief biography of Irvin D. Nicholas, insurance and risk manager for the University of California at Berkeley, from an April 21, 1975 story. Eighteen risk managers were named as some of the best in their field, including Mr. Nicholas. He joined the University of California in the mid-1960s as an administrative analyst in the controller's office. He was promoted to assistant insurance officer in 1967. In 1969 he became the insurance and risk manager, responsible for property and casualty risk management and loss prevention. Mr. Nicholas manages extensive self-insurance programs for the university. He has a five-person department. He has a BS in business administration from Oregon State University.

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Urges cities to review growing risk of liability in face of tighter market

ANAHEIM, CA.—Loss prevention for public entities must begin with the new array of liabilities which have opened up for municipalities in the last 20 years, according to Samuel Alcorn, national vp, Bayly, Martin & Fay, Inc.

Addressing a seminar on risk management for public agencies, Mr. Alcorn said that public entities today face a scope of liabilities that was undreamed of two decades ago. He was speaking at the 22nd annual Western Safety Congress, sponsored by the Greater Los Angeles Safety Council.

Mr. Alcorn pointed out that broadened liabilities together with rising court awards have been translated in California into a severe contraction of the insurance market for political subdivisions. Pacific Indemnity Co., an underwriter which is thought to have pioneered in public entity insurance, ceased to offer liability coverage in California last year, he noted (*Business Insurance*, June 10, 1974).

"And The Insurance Co. of the Pacific Coast, which was emerging as a contender with Pacific Indemnity Co., has sharply curtailed its activities," he said.

Both carriers offered as reasons for their actions the new batch of liabilities imposed on municipalities and the dramatic increase in large court awards, he said. Other carriers have reacted by offering more limited coverage, he noted, while all underwriters have boosted their commissions to political subdivisions.

Mr. Alcorn related that the flood of new liabilities began in California when the state supreme court swept aside governmental immunity, causing new legislation that redefined on a more limited basis the areas in which immunity could be claimed.

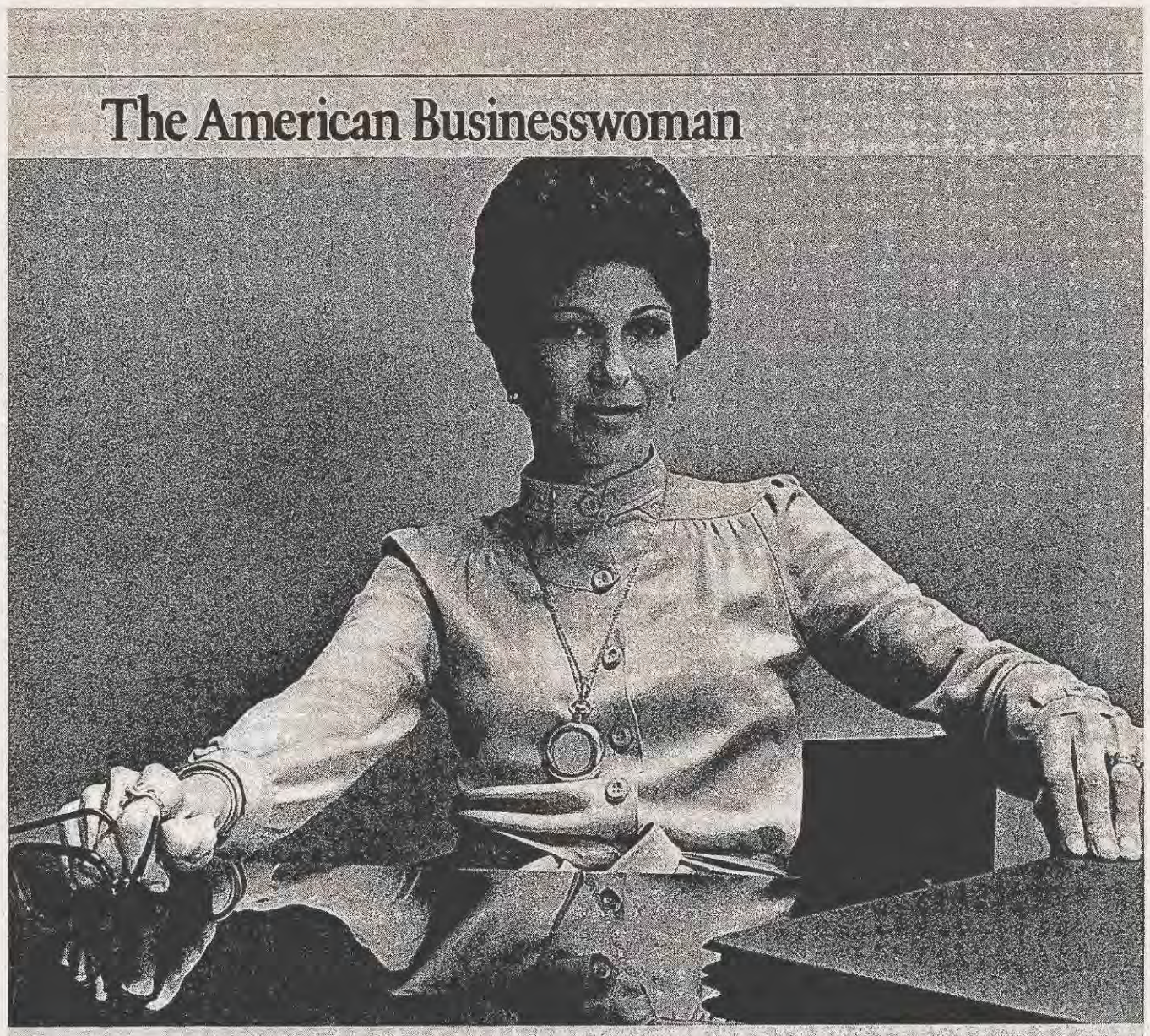
As an example, he cited the inverse condemnation decision against Los Angeles County, a client of Bayly, Martin & Fay, Inc., for landslide damage some years after a road was built across a hill. The condemnation, he said, created hugh liabilities on operations of airports, roads, dams and refuse dumps.

Other new waves which have opened up public agencies to new types of liability lawsuits are, he said:

- Environmentalism: New federal and state legislation imposing liabilities ranging from defined to unlimited liability led underwriters to exclude seepage, pollution and contamination from liability policies, although, he said, a limited market for accidental discharge and seepage from oil-carrying vessels now exists.
- Consumerism: Among other things, he said consumerism has meant an increased number of suits against police departments and police officers for the abuse of police power. He noted that at the same time the rise in urban terrorism and radical groups has boosted the need for security.
- New measures of damage: The courts are adopting more liberal measures of damages to supplement measurable dollar damages for provable expenses and loss of income with "extensive awards for loss of consortium, disruption of lifestyle, emotional trauma and pain and suffering." The result, he said, are verdicts in excess of $1 million for injuries to a single individual.
- Punitive and exemplary damages: The demand for such damages has become a common appendage to the weakest third party action, he asserted.

Mr. Alcorn told the seminar that an effective risk management program, the only response to escalating liabilities, must pay heed to such fine points as noise levels and exposures for the invasion of privacy.

"Members of the public . . . as well as employes . . . can claim damages if your activities project high noise levels into their environments," he pointed out. ■



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Legislation strips control of employer over injured

ANAHEIM, CA.—The free choice of physicians by injured workers could become law in California this year, forecast Cal C. Calkins, manager of safety and personnel at the Pacific Motor Trucking Co., during a seminar on fleet safety held during the Western Safety Congress.

"Fight this one," he warned the audience, noting that such laws exist in other states. He said the problem is that such legislation strips employers of the control over the medical treatment of their injured employes.

Mr. Calkins went on to advise the audience to be alert to the following actions by federal regulators:

- Federal Motor Vehicle Safety Standard 121 is "controversial," he said because it raises a number of questions such as: When does a truck repair operation become a manufacturing or remanufacturing job that requires certification under FMVSS 121? He noted that the National Highway Traffic Safety Administration is currently contending that "kit' type replacements—the replacement of a truck or tractor cab, for instance—constitute manufacturing that requires certification. There is still time to alter details of this act, he said.
- The Bureau of Motor Carrier Safety will probably tighten up physical standards for bus and truck drivers this year, he predicted.
- Truckers must be prepared to qualify to transport hazardous materials according to the Transportation Safety Act of 1974, he pointed out, noting that many fine points of this act are still open to discussion.

Timothy Blaney, manager of safety, Pacific Intermountain Express Co., told the seminar that "after reviewing news clips on noise and 121 non-skid brake regulations I found there wasn't a single article written in defense of either law."

He urged trucking safety managers to utilize 'cost-benefit ratios' in explaining state and federal transportation regulations to their managements.

"If the professional fleet safety man had developed the 'cost-benefit ratio' for the new noise law, we would not have the mixed emotions regarding the legislation we have today," he contended.

"The safety manager would have shown that for every $1.50 spent on purchasing a 'quiet truck,' we would have saved $1.75 in fewer claims for hearing loss." ■

Insureds, brokers argue with insurers

See fiduciary risks covered by D&O

DALLAS—Policyholders and brokers alike are maintaining that until underwriters add specific exclusions to directors' and officers' liability insurance policies, there is coverage included under those policies for directors and officers in their roles as fiduciaries under the Pension Reform Act of 1974.

This was one of the conclusions to be drawn from comments during a special liability insurance seminar held at the 13th annual conference of the Risk and Insurance Management Society here.

Elton Diehlmann, vp of Johnson & Higgins, moderator of the session on D&O and fiduciary liability coverages, told the audience of 30 to 40 persons that he believes there would be coverage under D&O policies for losses incurred if directors or officers were sued for actions taken as benefit plan fiduciaries.

Several members of the audience said they have also concluded there is fiduciary liability coverage for directors and officers under D&O policies until insurers add a specific exclusion for this risk.

"The fact that London sees the need for a specific exclusion shows that the coverage is presently in effect under D&O," said one corporate insurance manager.

It was noted that insurers are claiming such coverage is not present under D&O forms because the wording of policies provides coverage for directors and officers acting "solely" in their capacities as directors and officers. "The underwriter who is hanging his hat on the word solely in the D&O is doing so incorrectly, because the word is not used where he is saying it is uesd, declared Mr. Diehlmann.

An informal vote taken during the session showed an overwhelming majority of those in the audience believe the responsibility to act as a prudent man under the pension reform law is no different now than it was before the law.

A bank manager in the audience noted that he had spoken with two major New York banks recently, however, which view the potential liabilities under the law quite differently. "One major New York bank said it does not see any need for any additional liability coverage (for its trust department), while another said it is out buying all the additional coverage it can get anywhere," he said. His own bank, he said, has not seen fit to purchase any additional liability coverage for trust department errors and omissions, or, for that matter, for a subsidiary which provides outside investment advisory services.

Mr. Diehlmann noted, however, that in the case of corporations with benefit and pension plans with which he has worked, "by far the majority which have considered fiduciary liability coverage have concluded they need it."

The concept of tying the fidelity bond (mandated by the pension law) together with the fiduciary liability coverage, and putting them with the same insurer "has pretty much gone out the window, I think," said Mr. Diehlmann. He was responding to a member of the audience who brought up the situation of having different carriers for the fiduciary liability insurance and for the fidelity bond, and the possibility that both would deny a claim, contending it was covered by the other policy.

"We also believe there could be this same kind of conflict if you use different carriers for D&O and fiduciary liability," said the risk manager in the audience. He told the group he has obtained an extension of his D&O coverage to cover liability risks "at least temporarily." ■

Losses hit $7 million

Insured losses of an estimated $7 million were the tab on spring tornadoes which ripped through rural Missouri, April 23 to 25, according to the American Insurance Assn. A tornado that hit the town of Neosho on April 23 caused an estimated $6 million in insured losses while another storm brought $1 million in insured damages to five rural counties in the state.

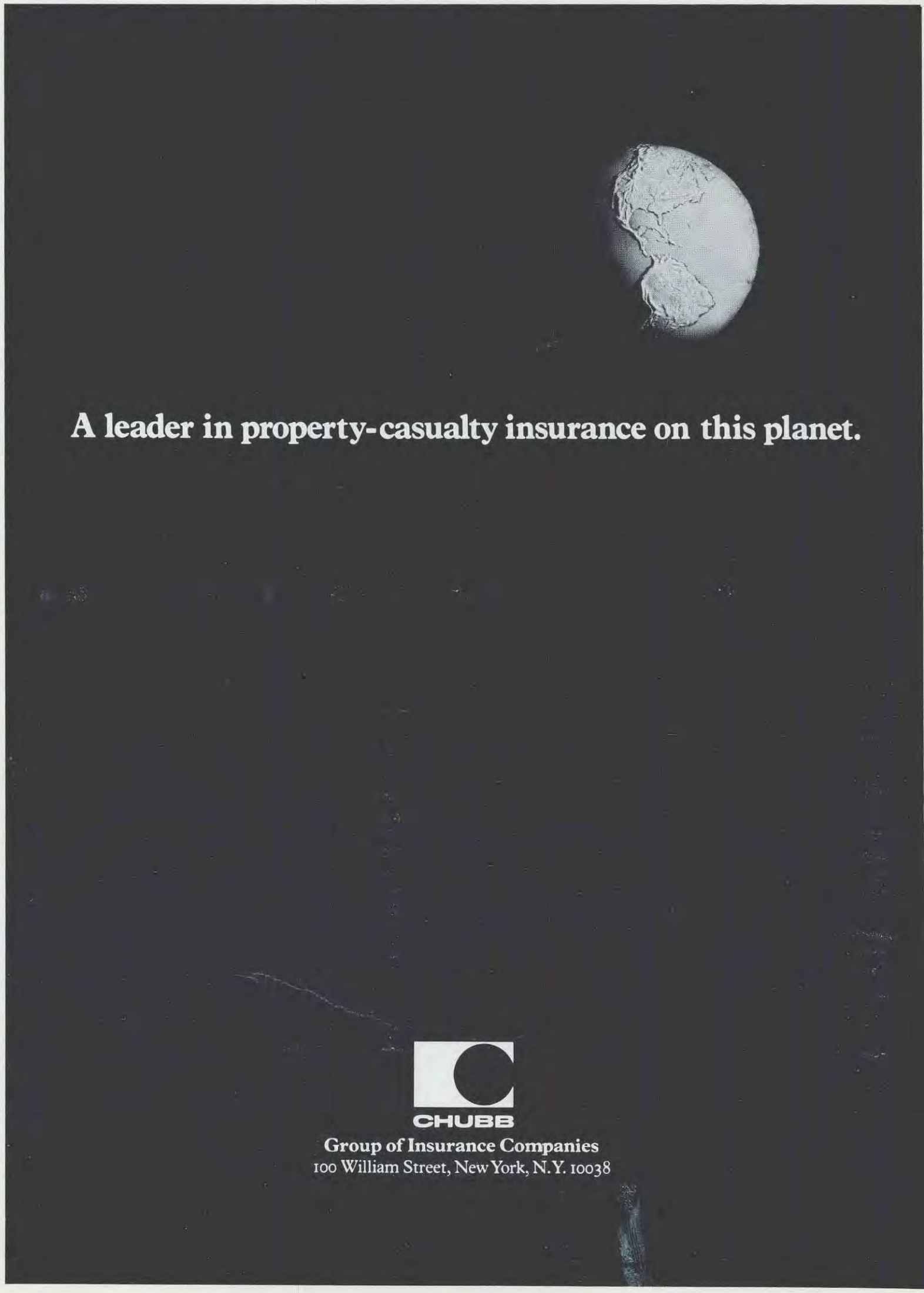


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OSHA regulations not adequate in themselves

NEW YORK—Allowing OSHA regulations to exercise an undue amount of influence over the direction which a corporation's loss control program takes can prove to be a serious and costly mistake, according to the head of a loss control consulting firm.

Speaking at a panel session of the OSHA/USA Conference, Gerald L. Maatman, chairman of the board of National Loss Control Service Corp. (NATLSCO), said the OSHA standards, in themselves, do not adequately cover all of the subject areas included within their scope.

"A good example is that of life safety standards where it can be readily noted that OSHA has adopted only the general portions of the National Fire Protection Life Safety Code," he said.

"The most glaring deficiency inherent in any overdependence on OSHA standards as a measure of good fire protection is their almost complete lack of any emphasis on the people-related or human side of the equation," he continued, "and on the organizational structure and procedures necessary to carry out an effective corporate fire protection program."

Mr. Maatman, whose firm is a division of Kemper Insurance Co., enumerated OSHA's fire protection regulations which, he said, touch in varying degrees on the areas of: egress facilities, storage and use of flammable liquids and gasses, explosion hazards of dusts, vapors and gasses; maintenance of fire protection equipment; precautions needed in connection with hazardous maintenance and operations and design of fire extingushment and alarm systems.

Though the OSHA regulations impact on a large number of fire protection factors in the total loss control area, the consultant said, a corporation's total fire protection program must reflect a much wider range of considerations in the areas of personnel and public safety, property preservation and production interruption potential.

Mr. Maatman described the surveys, inspections and other services geared to OSHA compliance available for businesses.

"More recently the majority of our OSHA consulting activities have been taking place within the framework of broad loss control engineering assistance programs rather than as an isolated consulting service unto itself," he said. ■

Loss control requires all managers' attention

NEW YORK—A broader view of loss control, one aimed at elimination of problems of occupational health, property protection, product safety, security and "any other area where an unintended incident can occur and detract from the company's profitability," was outlined by Raymond H. Marks, president, Tenneco Chemical Co. at a panel session of the OSHA/USA conference here.

OSHA/Report

Management at all levels must be involved in loss prevention, Mr. Marks said. "The responsibility for loss control can no longer be left to first line supervisors and a few interested plant level managers."

Management should be involved on the legislative level in preparing safety and health standards, he continued, "and not wait until they are adopted. . .only too late to realize that compliance may be impossible."

"Realistic standards will result, Mr. Marks said, "only from the knowledgeable and realistic inputs of the professionals who are out on the job."

A sound loss control program requires total dedication of labor as well as management, he noted.

"It is unthinkable for industry to spend millions of dollars providing a safe and healthful work place only to find that employes violate rules. .established for their own protection," he said.

In contrast to complaints other businessmen have voiced about the Occupational Health and Safety Act (OSHA), Mr. Marks observed that the act had little effect on Tenneco Chemical's loss prevention program.

"Complying with OSHA represents only a small portion of our ongoing efforts to protect employes and property," he said, "We go far beyond what the law requires.

"I find it difficult to accept the philosophy that the imposition of numerous specification standards will have any appreciable effect on reducing employe injuries and illnesses," Mr. Marks added.

He referred to his company's 1974 statistics which show a frequency rate of 2.13 disabling injuries per million man hours and a severity rate of 118, "both considerably better than figures reported by the Bureau of Labor Statistics, Manufacturing Chemists Assn. and the National Safety Council," he added.

Loss prevention and profit performance have become synonymous, Mr. Marks said, "The company that subscribes to a strong loss control program should be able to produce a given product at a lower unit cost and is likely to leave the competition at the starting gate." ■

NY no-fault in full force

NEW YORK—The state insurance department told self-insurers and insurers to keep paying no-fault auto claims while the issue of the law's constitutionality is being fought in court.

The department sent a circular letter notifying self-insurers and insurers that all provisions of the state's no-fault insurance law remain in full force. Delay in payment of first party benefits to car accident victims would be an unfair claims settlement practice subject to action by the department, the letter stated.

Supreme Court Justice George H. Nichols declared New York's no-fault law unconstitutional last month. The decision will be appealed by the state attorney general, who is a party to the action.

Stanley Dorf, chief of the insurance department's automobile and compensation bureau, told *Business Insurance* the circular letter was sent to 22 corporations which are officially listed by the motor vehicle department as self-insurers. He said the department had difficulty in determining the exact amount of corporate self-insurers in the state. ■



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Woodcock & Williams knock OSHA while Stender picks up the defense

By MARGARET LeROUX

NEW YORK—Strong criticism of the Occupational Health and Safety Administration (OSHA) was voiced by UAW president Leonard Woodcock and Sen. Harrison A. Williams (D-N.J.), who both addressed the OSHA/USA conference here late last month.

"The promise of OSHA to American workers has not yet been fulfilled," Mr. Woodcock said, while Sen. Williams who chaired the Senate Labor Committee's investigation of the implementation of OSHA charged "severe administration ineptitude and lack of sense of direction in both the Labor Department and HEW."

In contrast, John H. Stender, Assistant Secretary of Labor and head of OSHA, told the 5,000 conference attendees the past year has been one of accomplishment. He promised better things to come.

Sen. Williams noted that the Labor Committee report was critical of OSHA for a number of reasons, among them:

- Since OSHA's enactment more than three years ago, approximately 95% of all covered employers have yet to experience an OSHA inspection.
- In the fiscal year 1973, 98% of the violations cited were classified as non-serious and carried an average penalty of $18, "a sharp contrast to the complaints of some of the business community," the senator commented.
- OSHA had no information on the number of citations or violations followed up on and, therefore, no way of determining the number of violations corrected.
- During the fiscal year 1974 no citations were issued in 32% of the accident inspections.
- In four regions investigated, the time lapse between receipt of a valid employe complaint and inspection exceeded 60 days in 36% of the cases.
- Of 20 criteria documents received from NIOSH since January 1972, the Labor Department had proposed standards on only three of the identified health hazards.
- NIOSH understaffing had forced the agency to reduce by half its goals for criteria document production.

In Mr. Stender's address he noted that "Since our (OSHA's) founding we have made nearly 220,000 inspections of workplaces across America. We have issued some 150,000 citations for almost 180,000 alleged violations."

The UAW's disappointment with OSHA is based on lack of adequate funding for the act, the return of OSHA jurisdiction to the states and insufficient health and safety standards, Mr. Woodcock said.

"We firmly believe that most states will never be able to operate adequate OSHA programs," the labor leader stated, citing the state plans of Illinois, New York and New Jersey which the federal government found not as effective as the federal program.

M. Stender, who spoke earlier, said OSHA is working to make all state standards uniform and to ease the problem of compliance. "We are encouraging state participation in standards setting," he said.

However, Mr. Woodcock scored the federal program for its reluctance to set adequate standards: ". . . one of OSHA's most aggravating faults is its inability to publish these standards in an understandable and easily referenced way," he said.

OSHA/Report

The present general industry standard is confusing to employers and employes alike and has become the convenient target of critics who are opposed to the concept of the law, he added.

Mr. Stender told of improvements in all future OSHA standards, which will include uniform format, and a set order of sequence and readible language.

The revocation of the "no-hands-in-die" standard especially displeased the UAW, as power press operations play a major role in the manufacture of automobiles and farm implements.

OSHA's neglect of health standards was another criticism of both Mr. Woodcock and Sen. Williams.

OSHA has promulgated only three standards of its own: asbestos, vinyl chloride and a list of 14 carcinogens, Mr. Woodcock said, "and even these few standards . . . may not be stringent enough."

"In the past six months OSHA has proposed only two new health standards—noise and arsenic—although they stated to us Oct. 1, 1974 their intention to have also proposed within that time standards on beryllium, carbon monoxide, inorganic lead, toluene diisocynate, tricholorenthylene, toluene, inorganic mercury, sulfur dioxide, sulfuric acid and benzene," Sen. Williams charged.

Mr. Stender noted that OSHA will open hearings June 23 on a proposed noise standard.

"We are standing by our recommendation to retain the present workplace noise exposure limit at 90 decibels per eight hours worked," the head of OSHA said.

The UAW would prefer a lower limit of 85 decibels, Mr. Woodcock said.

"We are disturbed that OSHA is ignoring scientific evidence produced by NIOSH and the Environmental Protection Agency which shows that unacceptable amounts of hearing loss occur at levels below 90 decibels," he explained.

Sen. Williams said that NIOSH, which has the responsibility for producing documents on hazardous substances and for research on industry hazards is "underfunded, understaffed and generally given low priority by its parent agency, HEW."

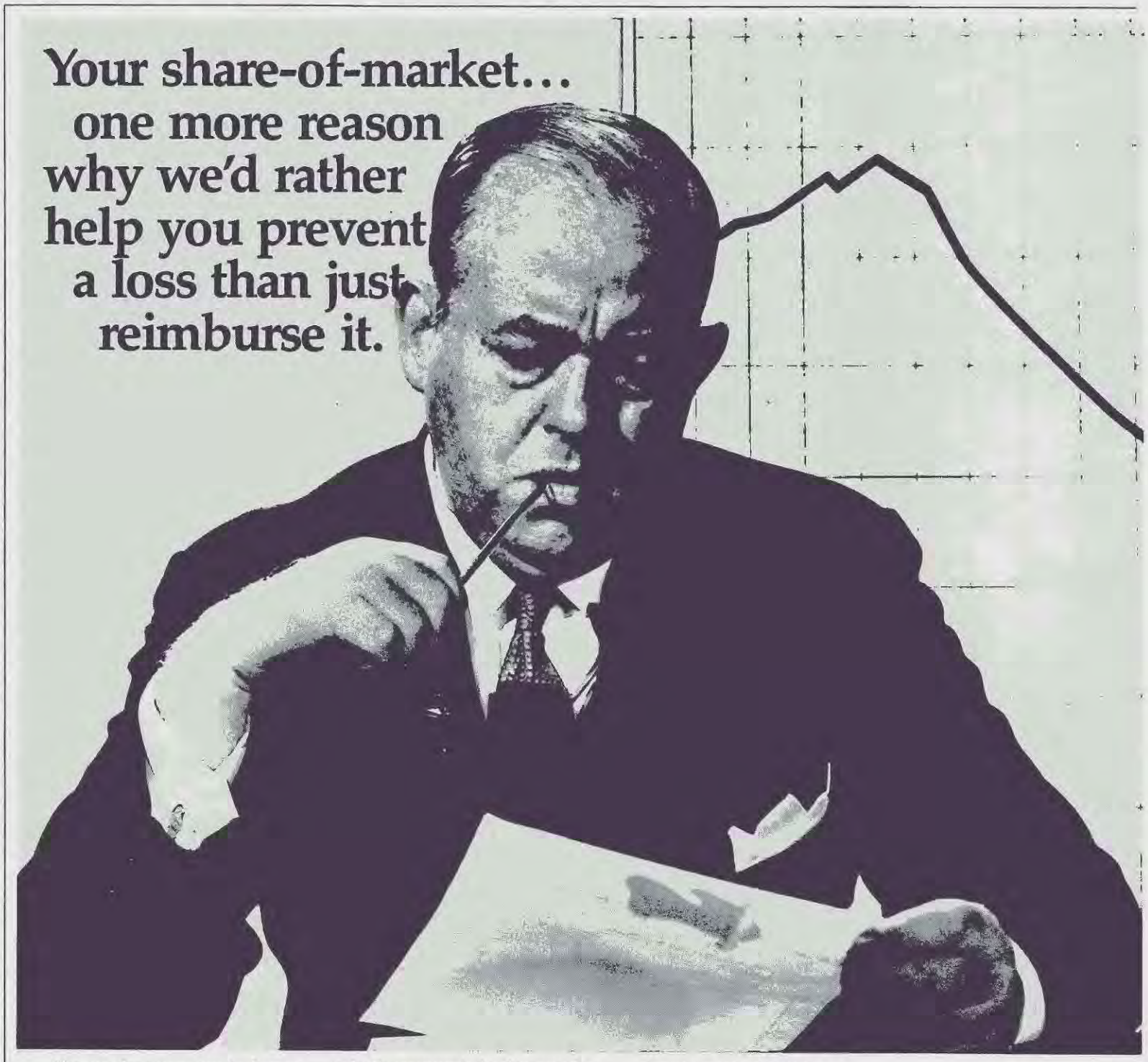
Sen. Williams noted that there will be an opportunity for a more constructive attitude in HEW with the recent appointment of a new director of NIOSH and the coming nomination of a new assistant secretary for health.

The Senate Labor Committee's investigations have documented that most OSHA problems are administrative, not legislative, the senator said.

"The issue . . . is building a sound administrative base in the Labor Department and HEW for the greatly increased occupational safety and health responsibility they are likely to have in the future," he concluded. ■

St. Paul agents merge

Writers Inc. and the Krawetz Agency, both based in St. Paul, have merged under the name of Writers Inc. Both firms underwrite "all types of insurance and offer risk management services", according to an acquisition notice.



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N.Y.'s OSHA plan being shifted back for federal government enforcement

NEW YORK—Gov. Hugh L. Carey is switching most responsibility for enforcing occupational safety and health activities in New York from the state to the federal government.

A Carey aide said the state labor department has been operating with about 400 field enforcement agents. Under the governor's scheme all but 50 of these workers would be laid off by the state. Approximately 130 to 150 of them would be rehired by the federal government in essentially the same capacity, and the state is lobbying to have another 50 or so employed by the federal government.

The drastic cutback in state occupational safety and health enforcement officials is estimated to be able to save some $2.6 million during fiscal 1975-76; transferring safety and health responsibilities to the federal government will save an estimated $3.5 million thereafter, the governor's office said.

OSHA/Report

In a letter to John H. Stender, assistant U.S. Secretary of Labor, Gov. Carey stated that New York would no longer attempt to develop a state plan that would have permitted the state rather than the federal government to assume the responsibilities for an occupational safety and health program in the state of New York.

Despite the state enforcement officials' cutback, the governor announced that he is developing a state program which will provide occupational safety and health coverage to public employes for the first time. The federal program does not include this area.

A consulting service that will assist employers in complying with areas under federal jurisdiction and areas remaining under state jurisdiction is to be set up by the state under the new program.

There are certain areas which the federal government has no jurisdiction to monitor occupational safety and health measures. These include underground mines and certain types of radiation operations.

New York's state force will retain authority in these areas, as well as in public safety and in licensing the operators of cranes and lasers and blasters.

Under the federal occupational safety and health act, New York State's continued authority had depended upon the enactment of specific laws, which the state legislature failed to pass at either the 1973 or 1974 legislative sessions.

Governor Carey announced his decision to redefine the state's role in occupational safety and health issues in the absence of any clear indication of unified legislative support.

He requested that the federal government's program be operational on June 30, 1975. Phaseout of state safety and health activities will occur throughout the period. ■

Safety plans called 'false and obsolete'

NEW YORK—Most corporate safety programs are based on principles that are not only obsolete, but in some cases not true, according to Dan Peterson, safety consultant with the General Adjustment Bureau.

Mr. Peterson spoke at a panel session at the OSHA/USA conference here in late April. An example of an obsolete safety principle, Mr. Peterson said, is the domino theory of accident causation.

"This theory suggests if we remove the act and/or condition that the accident and injury will not occur," he said.

Newer safety theories dispute the domino theory, Mr. Peterson explained and replaces it with the multiple causation theory, "which suggests that the act, the condition and the accident are all symptoms of something wrong in the management system."

Other new safety principles which give an indication of what the future of safety management holds, Mr. Peterson said include:

- Certain sets of circumstances can be predicted to produce severe injuries. These circumstances can be identified and controlled.
- Safety should be managed like any other company function. Management should direct the safety effort by setting achievable goals, by planning, organizing and controlling to achieve those goals.
- The key to effective line safety performance is management procedures that fix accountability.
- The function of safety is to locate and define the operational errors that allow accidents to occur. This function can be carried out by asking why—searching for root causes of accidents and by asking whether or not certain known effective controls are being utilized. ■

Safety shoe responsibility

CHICAGO—Employers in general industry are not required to pay for safety shoes even though they must be worn to comply with Occupational Safety and Health Administration (OSHA) standards.

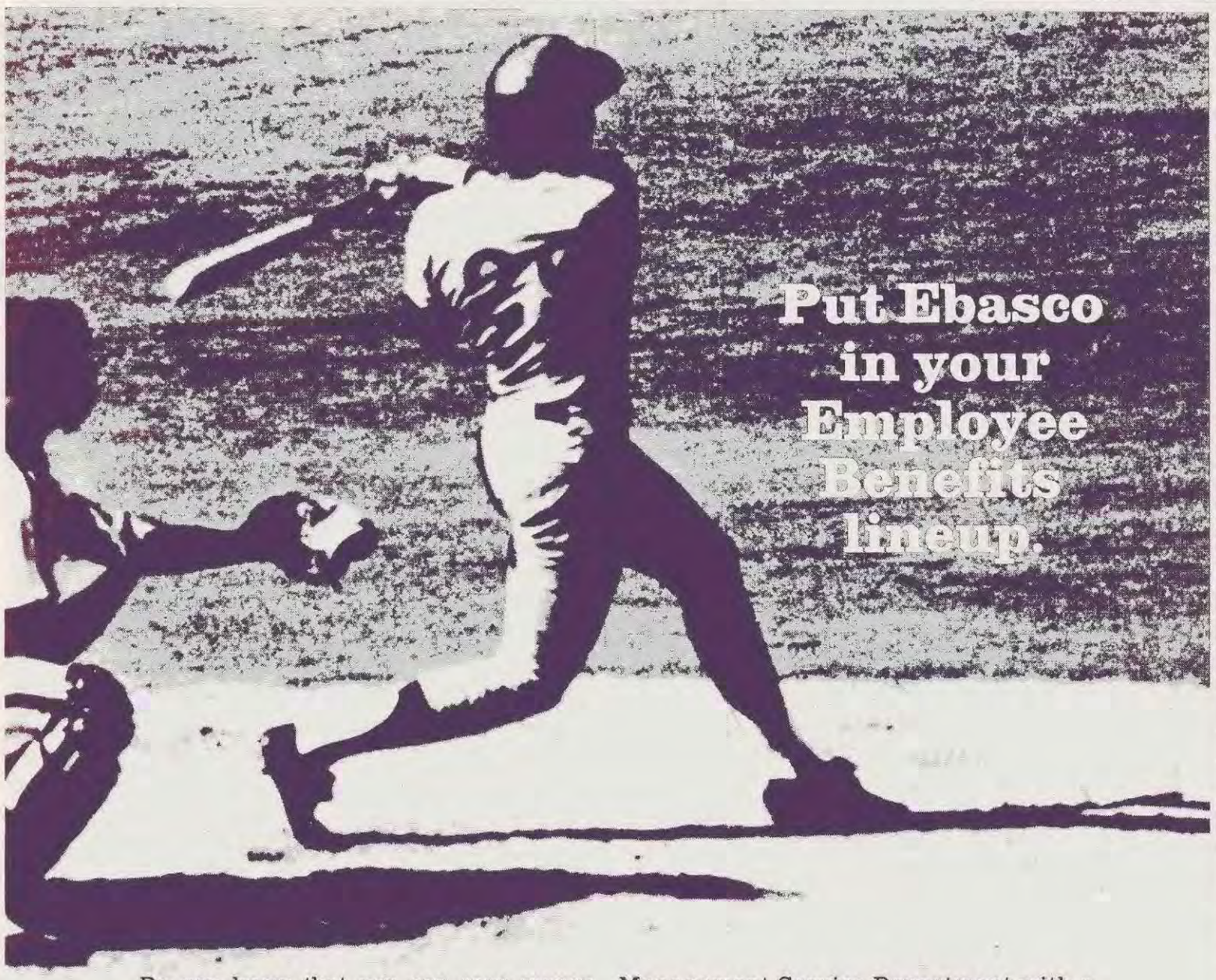
A Third Circuit U.S. Appeals Court in Philadelphia upheld an OSHA review commission decision on the issue of whether the employer or employe was required to pay for the safety shoes.

The ruling does not diminish the employer's responsibility to adhere to the standard, the court held, nor does it delay implementation, even if the company and the union choose to bargain the economic issues between them.

The union involved in the case, according to the locally-based Commerce Clearing House report, contended that the safety standard involved in the dispute required the employer to pay for personal protective equipment.

The OSHA standard states that "protective equipment . . . shall be provided, used and maintained in a sanitary and reliable condition whenever it is necessary by reasons of hazards or environment."

The court noted that the language was not clear as to whether the equipment should be provided by the employer or employe and pointed out that some other standards explicitly required employers to provide particular equipment. ■



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Deposit box question in Bank of America theft

LONDON—Bank of America is known to be insured in the London market for its loss April 24 of more than $2 million in cash and safe deposit box contents, taken by armed robbers who entered the bank's West End Branch in early evening.

The robbers, after overpowering the remaining bank staff at gunpoint, stole at least $1 million in cash, in the form of dollar bills, pounds sterling, and other currencies. They also broke into possibly as many as 60 safe deposit boxes and stole undetermined amounts of valuables, cash and securities stored in the boxes.

The bank headquartered in San Francisco, is known to have the usual kind of umbrella liability insurance which covers all overseas branches. At least part of this coverage—most observers believe it is a very substantial part—is placed in London markets. The umbrella liability insurance would naturally cover cash and other property under the direct control of the bank.

But the problem comes with the safe deposit box contents, which is not always covered under a bank's usual liability insurance, depending on the terms of the policies and whether the box renters can prove to the bank what the contents of the box were, and the value of what was stolen.

Sources close to Bank of America indicated that the bank would not deny liability for the value of box contents taken by thieves. "One way or another, most banks have insurance against liability for the loss of box contents," added knowledgeable observers.

Bank officials at the West End branch declined to comment on insurance coverage for the losses. One executive, however, noted: "We're more concerned with the problems of our customers at this moment, as we want to find out how many of them lost property."

At least one customer who had leased a box from the bank said she had put more than $200,000 worth of her property into the box, and had not bothered to insure it herself because she thought it would be safe.

Observers here believe the bank's coverage of losses by these ox holders depend on the extent to which the bank is prepared to accept responsibility for losses of personal property.

It is thought that another box contained gold coins worth more than $250,000.

The bank which was robbed is in the heart of Mayfair, not far from the U.S. Embassy here. Bruce Mitchell, vp of the bank branch, said, "We don't yet know how many of the private safe deposit boxes have been opened by the robbers. We have to wait for our customers to say what they had put in them." ■

Shareholders to vote on pension changes

NEW YORK—With a spate of annual shareholders' meetings coming up this month and next month, there is a beginning trickle of voting issues now tied directly to compliance with the 1974 Employes Retirement Income Security Act (ERISA).

Standard Security Life Insurance Co., for instance, has sent a notice to shareholders informing them that their annual meeting June 4 will include a vote on amendments to the employes' pension plan and supplemental pension plan to comply with the new law.

According to Standard Security Secretary Carols Amadeo, the proposed amendments will mean increased company contributons for 1975 because under ERISA, there will simply be more plan participants.

Last year, company contributions amounted to $45,928. But that was under a plan which required employes to put in three full years of service before becoming plan participants. The new amendments to the plans will grant eligibility after six months of service.

Vesting formulae will also be switched. Currently, there is no vesting the first eight years, followed by a 10% a year graduated vesting method thereafter. The new set up will have no vesting for the first 10 years, with 100% vesting thereafter. ■

Sponsor can be included in fiduciary plan

LOS ANGELES—National Union Fire Insurance Co. has cautiously begun to offer coverage for the company that sponsors a pension or an employe benefit program, according to Joseph P. DeAlessandro, senior vp, American Home Assurance Co. and National Union Fire Insurance Co.

He indicated to a gathering of insurance executives that National began to include coverage for the sponsoring corporations because of competitive pressures.

He said the policy now being offered by National Union has a $15 million limit or "the highest capacity available anywhere." Deductible for the straight fudiciary protection is $1,000, he said, adding that the deductible does not apply to the defense. It requires first-dollar coverage, he said.

Mr. DeAlessandro revealed that National Union has begun to cover sponsoring companies in its fiduciary liability coverage after a member of the audience stood up to complain that "brokers are in a bad position under National Union's policy.

"National Union is wrong in not insuring corporations except those in A-1 health," the critic said.

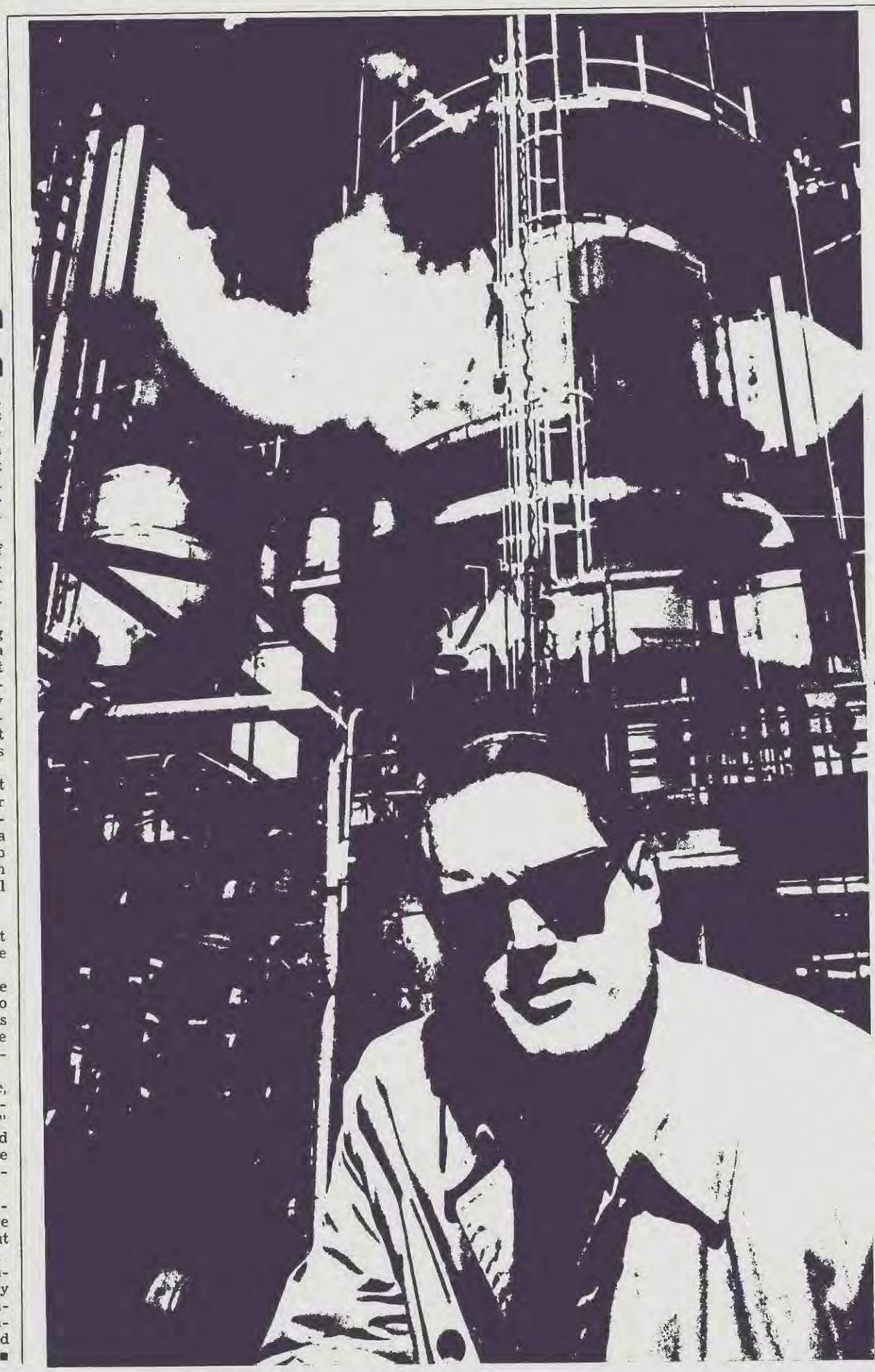
Replied Mr. DeAlessandro: "The most ideal situation would be to have the corporations named as the insured in our policy. But we are in the business of being underwriters, not undertakers.

"And in this economic climate, we watch bankruptcies that average between 500 to 2,000 a week."

Nevertheless, he acknowledged National Union will in the future cover sponsoring companies whenever it feels it can do so.

"Since we have made the decision to include corporations, we have had to refuse only one out of 10 corporations," he disclosed.

Mr. DeAlessandro defined National Union's policy, originally designed to cover individual fiduciaries only, as based on the principle of "flow-through errors and omissions." ■



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Ca. negligence rule seen as boon, bane for industry

By JOANNE GAMLIN

LOS ANGELES—Insurance executives, including risk managers, expressed reactions ranging from approval to apprehension over the decision by the California supreme court to embrace the doctrine of 'pure' comparative negligence.

Those who approve do so because they believe that the new doctrine will result in lower claims awards and a reduction in the number of liability cases that end up in the courts. Those who arrive at the opposite conclusion cite a probable hike in liability premium costs and an increase in the number of court cases.

The state supreme court espoused the doctrine, which is already in effect in some 25 other states, in its March 31 decision on the case of Li vs. Yellow Cab Co. of California. The case involved the Nov. 21, 1968, traffic accident between Nga Li whose automobile was hit while in the process of making a left turn by a vehicle driven by an employe of the Yellow Cab Co. (*Business Insurance*, April 21).

The new doctrine supplants the long-standing concept of contributory negligence under which the plaintiff's contributory negligence in most cases bars recovery against a defendant whose negligent conduct would otherwise cause him to be liable to the plaintiff.

Thus, under that doctrine the lower court found for Yellow Cab. It reasoned that Ms. Li was negligent in making the left turn at the moment she picked because the cab was moving in her direction at a rapid speed.

However, the case was taken by Ms. Li's attorneys to the California supreme court "which had been waiting for a chance to enunciate the doctrine of 'pure' comparative negligence for a long time," said Robert Patterson, vp and general counsel for Yellow Cab Co. of Ca. He said the supreme court has referred his case back to a lower court for a second trial to determine the degree of negligence of each party.

Yellow Cab Co. of Ca., he went on, maintains a $25,000 self-insurance plan for fleet liability. An excess layer of insurance is provided by the Signal/Imperial Insurance Co.

With its $25,000 in self-insurance for fleet liability, Mr. Patterson noted that his company will have no trouble in covering the loss which he figures will not amount to more than $3,500.

However, he observed that in his view the new doctrine of comparative negligence, which states that liability must be assessed in proportion to fault, may exert an impact over the entire spectrum of liability coverages in California.

And, according to some, it could affect even workers' compensation. Steve Helfend, head of the subrogation department of the Los Angeles office of the State Compensation Fund, told *Business Insurance* he believes the new negligence doctrine will enable employers who are shown to be negligent to subrogate for the first time in years in California. With employers recouping a part of their losses from a second party, Mr. Helfend foresees an eventual halt to the climb in workers' compensation premium costs.

He illustrated: "If an employer who had to pay out $1 million in workers' compensation claims could subrogate and recover even $100,000, he could report only $900,000 in claims. In time, he could call a stop to the acceleration of his workers' compensation premiums."

Mr. Helfend cautioned it will take two years or more of appellate court decisions to establish rules clarifying the situation of most parties to compensation suits in the state.

At the same time, he, like most insurance spokesmen, said the doctrine represents a step toward new fairness in compensation trials.

"The old doctrine was unduly harsh," he commented. "Negligence was often predicated, under the theory of contributory negligence, on fictitious duties."

While a number of spokesmen for major insurance companies complained that the establishment of the new doctrine by judicial decision rather than by the legislature will mean a long period of interpretation, one risk manager was open about his approval of the new concept.

"We like it," asserted James Lang, director of insurance for Litton Industries. He explained the key reasons why Litton is pleased with the action of the state supreme court is that it foresees a reduction in liability claim awards.

"In the past, the state courts have found for plaintiffs who were, say, nearly blameless in the liability lawsuits they brought. Under the concept of comparative negligence, that person will have his reward reduced by the amount he is found to have been negligent.

"Further, when the concept of contributory negligence dominated, the person who was, say, 90% fault-free in a liability action, would be inclined to go to court if his insurance company failed to come to an out-of-court settlement.

"Now I believe that the insurance companies will have the motivation to settle out-of-court," continued Mr. Lang. "Simply going through the motions of apportioning fault will give the parties the basis for a compromise settlement."

Product liability more than any other category of the liability lawsuit spectrum will benefit from the adoption of comparative negligence, suggested Mr. Lang.

He added: "Litton sees the new negligence concept as being a lot fairer than the old doctrine."

The risk manager for a Southern California-based conglomerate, however, spoke for the majority of insurance spokesmen contacted by this magazine when he asserted that a jump in premium costs will be the first result of the change in negligence theories.

"Comparative negligence represents a new impetus to go to court because people who had no chance of winning under contributory negligence can now look forward to an award," he complained. "Yet as more cases land in court, all attendant court costs will go up."

Taken together, he concluded, these forces will act to give a sizeable shove to premium costs.

This risk manager declined to affix a percentage to his prediction of a premium rate hike. Other insurance industry sources, though, predicted hikes in the area of 5% to 6%.

Just the possibility of rising liability premiums could induce more companies to beef up loss control programs, attempting to put a lid on liability losses, this manager noted adding: "If there is an overall premium rise, it will be confined to the primary liability levels. Excess coverage will not be affected."

According to Harry W. Degner, vp, Fremont Indemnity Co., the new doctrine may well be a boon to excess liability insurance underwriters. He reasoned there will be fewer large claims and thus fewer losses that spill into the area of excess coverage. Fremont is an excess underwriter for auto and general liability. ■

Court verdict confirms both views of rule

LOS ANGELES—The first verdict under the doctrine of comparative negligence might be said to favor both the advocates and the skeptics of the new concept.

On April 17, a jury of nine women and three men in Los Angeles Superior Court awarded $41,288 damages to Ann Fraser, 60. She had sued I. Magnin & Co. after falling and breaking her wrist in 1973 at its Wilshire Blvd. store. Ms. Fraser asked for $100,000 in damages for her injury.

However, the jury, after hearing the case for a week, fixed the amount of damages at $51,610.

More important, it decided Magnin was 80% negligent and Ms. Fraser was 20% negligent.

Thus, as advocates of the law have argued, the doctrine of comparative negligence will produce smaller claims awards.

Yet, the skeptics could respond that people like Ms. Fraser might never go to court at all if they did not believe they could get $41,288 for a broken wrist, which was the amount Magnin's paid. ■

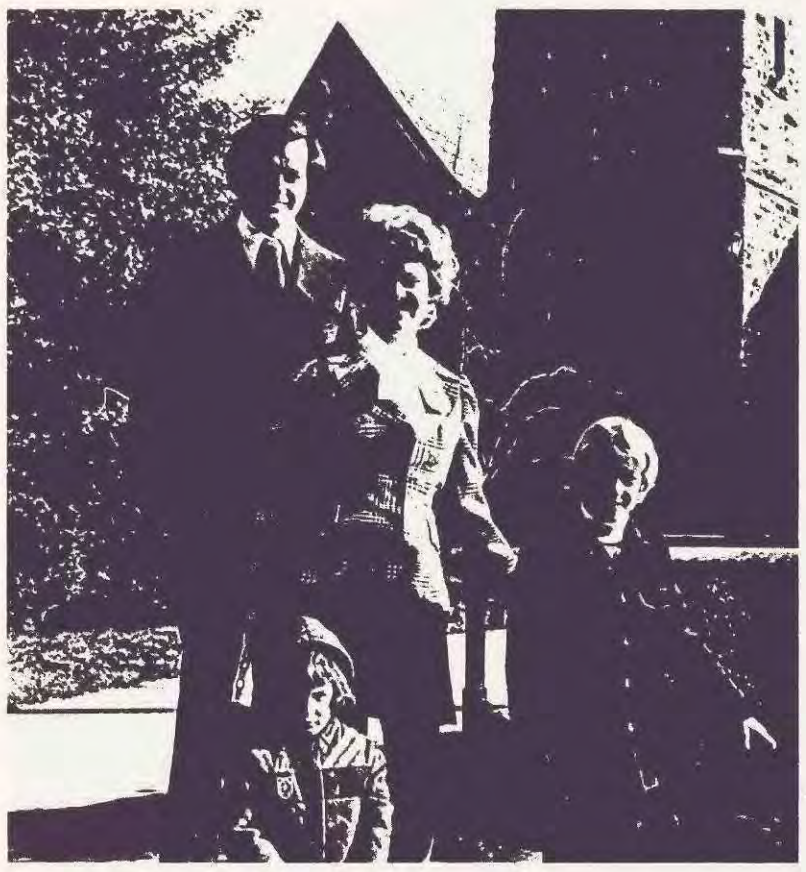
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business insurance

PERSPECTIVE

Fire protection becoming integral part of building, remodelling plans

"Construction, of course, has a great influence on the building's fire safety. Your older building may be easier–even cheaper–to protect than a new one. Most likely, it will be intrinsically more fire-safe."

By HARRY LEIN
Fire Protection Engineer
Pyrotronics, Inc., Cedar Knolls, N. J.

ADEQUATE FIRE PROTECTION to save lives and property is no longer a luxury. The modern building manager finds it a necessity, in many cases mandated by law or building code; actively encouraged by the insurance rate structure; certainly a strong point in discussions with prospective tenants.

Here in the U.S., we have more reported fires per capita than any other country in the world. Seemingly, they're related to the complexity of modern life, the growth of our standard of living. Fortunately the science of fire protection is advancing, too, finding new and better ways to sense fire, contain it, fight it.

If you're thinking that optimum fire protection is not in the cards for your building—think again. It will pay you to read "America Burning", the President's report, published in 1973, on the immense problem posed by fire in this country. As the problem gains increasing recognition in years to come, we'll be seeing fire protection as routine where it's seldom thought of now. Maybe you should put your modernized building in the vanguard, with a really forward-looking fire protection system. Well thought out, planned and installed as an integral part of your remodelling program, fire protection measures will be more effective and cost less, too.

Of course, unless you're remodelling a museum or the Federal Reserve, you probably won't be able to justify going all the way. What you will want to do is determine the particular hazards and vulnerabilities of your building, then decide on the degree of fire detection and protection that's optimum for you. Your fire arrangements in general will include:

- fire resistant construction;
- office furniture and furnishings;
- fire detection and warning devices; and,
- fire fighting devices such as sprinklers.

Most fire safety regulations accept complete sprinklering as the best possible provision for property and life safety. The additional feature of early fire detection is an important consideration.

In a building of any size, a warning system should be set up by zones so personnel can quickly locate the fire. Your fire detectors can be arranged to trigger visible and audible alarms at any central location, such as the superintendent's office. A worthwhile precaution is a remote annunciator panel near the main building entrance, duplicating all visual indications on the main system control panel—providing complete information to fire fighters who arrive during a fire emergency.

The best place to begin your fire planning is in the office of a knowledgable consulting engineer. He will go over your situation with you, survey your building for existing hazards, recommend what can be added in the way of further security. His recommendations will cover current practices, codes you will have to meet—as well as areas you may be justified in ignoring. Such a professional survey ensures a good job, and will probably save money in the long run.

You, of course, must set the guidelines, based on factors such as these: How old is your building now? Do you want to minimally modernize, or upgrade to an ultra-modern building? Will you add air conditioning? Additional means of electric entry? Telephone lines? Data processing connections? Do you plan to attract new tenants, and will they bring along any specific protection requirements?

If your remodelling plans don't include



a consultant, some insurance companies will provide personnel to inspect the building and suggest desirable fire protection procedures.

This is worthwhile, but the plan may not be as custom-tailored to your needs as your own consultant's plan.

In general, specific fire protection areas can be categorized in these terms:

Construction; use and occupancy; physical arrangements; air conditioning; height of the building; and, garage space.

Continued on following page

Law mandates change in German pensions

By KUMAD J. SINGH
Nobles Lowndes Deutschland GmbH
Frankfurt, W. Germany

ALL PERSONS GAINFULLY employed in Germany are compulsorily covered under the state pension scheme for retirement, disability and survivors' benefits. The option to contract-out is available to those foreign employes who begin to work in the Federal Republic of Germany and who apply for such an exemption within three months of their arrival.

Employer and employe both contribute 9% of the annual earnings up to the Social Security contribution ceiling (SSCC) which for the year 1975 is DM 33,600 (roughly equal to $13,500). This ceiling is a function of the national average earnings of the preceding three years prior to the last 12 months and is renewed January 1st each year.

Normal retirement age both for male and female employes is 65. Female employes may receive pensions commencing at age 60 provided they have been in the service for more than 10 out of the last 20 years. Following an amendment to the legislation in 1973, male employes after having completed 35 years of service, may choose to retire at age 63 and at age 62 if disabled. The trend is toward early retirement.

The pension title accrues at a rate of 1.5% for each creditable year of service of the assessed earning which is the individual earning adjusted to the national average, but it may never exceed the contribution ceiling of the year. The creditable years are not necessarily only those years in which contributions were actually made. Parts of the period of education, war service or their equivalents, which are periods of no contribution, are counted as creditable years. After a full career, say 40 years of participation, a member may expect a pension in the range of 40-50% of the pensionable earnings limited to the SSCC.

Higher paid employes thus end up receiving rather low pensions in relation to their total salaries. The accrual rate in case of professional disability is 1%, and in case of total disability, the rate is 1.5% for each creditable year of service projected to age 55. The survivors' benefits are a function of disability pension or of the retirement benefit that the deceased received at the time of death.

"In order to obtain a taxation advantage, the employer must issue a binding promise to his employes that the pledged benefits will be paid on fulfillment of the plan conditions . . . Reserves must be created."

On December 22, 1974 a long pending and widely discussed draft bill was finally signed into law. Various commissions of independent experts developed and discussed their concepts of a bill matching the newest social and fiscal developments. The role that the state played in achieving this aim was not only encouraging but it supported the desirable and the needful improvements of the private pensions in the face of inadequate state pensions.

The new legislation provides greater security to its beneficiaries and the law makers have paid special attention to see that the fate and the number of private plans are further improved. In order to achieve this aim tax incentives have been greatly improved. The law is an advance in many respects and has laid down stringent requirements in others. It consists of two broad sections, the first dealing with the aspect of the labor law (Arbeitsrechtliche Vorschriften), and the other with the fiscal aspects (Steuerrechtliche Vorschriften).

The new regulations under labor law are relatively modest and to some extent they were already met or even exceeded by many existing plans in Germany. In practice a whole spectrum of discretionary full vesting to the full revocation of benefits can be found.

General guidelines state that the benefits must be vested if an employe terminates service with the company after age 35 provided he has by that time either participated in the company plan for at least 10 years, or has been in the service of the company for at least 12 years and simultaneously has participated in the company plan for at least three years.

The amount of the minimum vestable benefit is a portion of the insured or the pledged benefit and this portion is in the same ratio as between the completed years of service and the maximum attainable years of service with the company until normal retirement date. Under a directly insured plan and in case of a pension fund (Pensionskasse), an alternative settlement can be achieved by transferring the paid-up portion of the policy to the employe in certain cases.

In some instances a lump sum cash settlement option is also available. The mandatory vesting clause applies to all forms of private pensions.

The employer must notify the terminating employe of his vested title.

The benefits attained at the time they become payable may not be withdrawn or reduced by the amounts of other plan benefits which have been increased from this point to reflect economic growth, etc. For instance, if an employe has a title to receive a DM 2,000 pension including 1,000 DM state pension, in the event the state pension should be increased in the following year from 1,000 to 1,100, the employer is not permitted to reduce his private pension from 1,000 to 900 DM.

It is prohibited to set off any benefits against the supplementary benefit plan entitlements in so far that they result from the member's personal contributions.

Following amendment to the Social Security legislation in 1973 any employe who opts to retire early is consequently entitled to receive a state pension. He can claim his portion of the pension from the supplementary pension plan provided he is eligible. In case of termination of state pension which could well happen if a retiree should take up a job bringing him more than one-eighth of the applicable SSCC, the private pension may also be suspended.

The law does not specify a certain minimum amount in case of such early refirement. It is understood, however, that any reduction must be equitable.

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Continued on following page

business insurance

PERSPECTIVE

Fire protection, prevention . . .

Continued from preceding page

Construction, of course, has a great influence on the building's fire safety and ability to protect its occupants. You may be surprised to learn that your older building may be easier—even cheaper—to protect than a newer one. Most likely, it will be intrinsically more fire-safe. For example, construction is usually heavier, with poured concrete or brick. Windows can be opened. There's less congestion of air ducts, electric conduit, telephone lines and other floor and wall penetrations that tend to limit a building's fire resisting abilities.

In any building, the fewer floor penetrations, the safer, and all should be properly sealed and dampered. The aim is to make a separate compartment or "sealed environment" out of each floor or occupancy space.

No building can be 100% free from the threat of fire. It's simply not feasible to eliminate all possibility of combustion. But any special hazards should be taken into account. So should any special occupancy such as a computer facility where the inherent value of the equipment and information stored may call for a redundancy in fire protection.

Start with your elevator system: shafts, lobbies, housing rooms, machinery room. If you haven't undertaken a modernization project recently, you may be pleasantly surprised to learn that most elevator companies can upgrade an older system in accordance with the widely popular "New York City concept". This involves automatic recall of elevators to main lobby in event of fire, with smoke sensing devices on each floor operating controls that make it impossible to open an elevator door at a fire-involved floor.

Since more and more building codes are endorsing this arrangement, manufacturers can often supply a "package" of controls, hardware, sensing devices—usually smoke detectors—to meet the same parameters as all-new elevators.

The hazard of fire could be considerably reduced if it were possible to eliminate all flamable contents from a building. This is impossible, however. Therefore, serious attention should be paid to the amount of combustibles that already exist or are planned to be added. Such things as office furniture, desks, chairs and tables should be non-combustible or of fire retardant treated wood. All upholstery and plastics should be self-extinguishing. Draperies and curtains should be flame proofed. Carpeting should be of low-flame spread rating.

If you don't now have it, your modernization program will most likely involve the addition of air conditioning. And the air conditioning or ventilating duct system can be a weak point in the fire protection system—a sort of continuous stack with openings at each floor, that if not properly considered can carry fire or smoke all through the building.

Remember, the concept is to make each floor a sealed compartment. That is why penetrations such as ducts are points of weakness. They should be sealed at each point of penetration and supplied with a fire damper held open by a fusible link which melts to close the damper on undue heat rise.

Smoke dampers are even more important, as lives may be threatened by smoke many floors away from the actual fire.

Sometimes an air conditioning system is arranged to aid in venting smoke. This is tricky territory, however, and unless an expert air conditioning engineer is drawing up the plans, it is generally safer to supply the system with air duct smoke detectors connected to shut down fans and blowers when fire is detected, to avoid circulating the smoke.

Furnace rooms and heating facilities should be specially protected because of the higher risk involved in the combustion process. And take a look at all normally unattended areas such as ducts, crawl spaces, storage facilities. Should a fire start there, there would be no one to see it, so these are particularly important places for automatic warning devices.

A tall building presents a special problem: the time required to clear it of occupants in an emergency. It is quite possible that a high-rise building will be occupied to some extent throughout the fire-fighting procedure (elevators, of course, should never be used for general evacuation in case of fire). And so in planning for life and property protection, it is particularly important to supply safe exit routes or refuge areas, structural stability, and means of limiting fire spread between floors.

In a garage, a good detection/warning system combined with easily reached dry chemical portable extinguishers may be a better choice than sprinklers. Tests show that, left to itself, a single-car fire will usually burn out with little chance of explosion, but on the sloping floor of a garage, water from sprinklers can frequently carry pools of burning gasoline from car to car and actually spread the fire. Furthermore, extinguishing water causes smoke spread with consequent loss of visibility. The best solution, then, is usually an automatic fire alarm system to provide immediate alarm for prompt, safe evacuation of the garage while visibility is still good, and the fire is small enough to be tackled with equipment on the premises, or by firemen arriving early before smoke obscures the work.

There are four basic stages of a typical fire:

- Incipient stage: chemical combustion begins but is essentially invisible.
- Smoldering stage: smoke is produced.
- Flame stage: point of ignition is reached.
- Heat stage: a raging, roaring fire, producing heat, flame, smoke and toxic gases.

The four basic types of fire detection devices correspond to these stages. Thermal detectors respond to heat energy of a fire—either a fixed level of heat, such as 135 or 180°F, or a sudden increase in temperature such as a rate of rise greater than 15°F per minute. An automatic sprinkler system is usually triggered by a thermal detector. Problem is, by the time these come into operation, the fire is well under way.

Flame detectors respond directly to infrared emanations from the flame. Their main use is where fire is likely to develop rapidly with little or no incipient stage, such as a fuel storage area.

Photoelectric detectors respond to high concentrations of visible smoke.

Ionization detectors respond to products of combustion, both smoke and invisible aerosols. They give the earliest warning because most fires release invisible products or combustion for some time before the smoke stage is reached.

In line with your modernization program, don't forget to draw up a good plan for maintenance of the new facilities:

- Good housekeeping: clean, clear hallways, trash disposal facilities—even wastebaskets and ashtrays.
- A fire-protection checklist such as recommended by the FIA.
- Routine after-hours inspection by the superintendent or an appointed fire warden.
- Check of specialized equipment by expert service personnel.
- Periodic fire drills.
- Routine protection against arson: all entrances attended by receptionist, doorman, security guard, etc. The harder you can make it to do damage, the better your chances of avoiding it. ■

H. C. Lein has served over 30 years in the interests of fire protection. After attending college at Newark (N.J.) University, he was employed by Walter Kidde & Co., specializing in fire detecting and extinguishing systems for special hazards. He has served on a number of National Fire Protection Assn. standards-making committees and is currently a member of the Society of Fire Protection Engineers. He is employed by Pyrotronics, Cedar Knolls, N.J.

German pension changes . . .

Continued from preceding page

Verein (VVaG) has been founded by the German Employers' and Industry Assn. in cooperation with the Assn. of Life Insurance Companies. Coverage in case of insolvency of the firm is provided to those active employes who have accrued any vested titles according to the stipulations of the law and also to the current recipients of pensions. Different funding arrangements have different fiscal implications and the benefits payable by the protection agency maintain their original tax status. The claims that are secured are limited to the threefold of the Social Security contribution ceiling, thus more than adequate.

The employer is obliged to contribute to the body at an initial rate of 0.15% of the policy reserve of a direct insurance, or the pension reserves, or in case of a support fund the reserve of current pensions plus 20 times the tax-deductible annual contribution for active employes.

The employer is obliged to review every three years the current pensions and to decide on their adjustment under consideration of fair judgment taking into account the interest of the individual and the financial position of the company. From the standpoint of social policy automatic adjustments are undoubtedly desirable, apparently the heavy cost factor did not let this clause come through in its original form. Thus no automatic escalation is mandatory.

Direct insurance as a funding method is often used by particularly small to medium-sized firms. The term "Direkt" signifies that the employer (or dependents) is the beneficiary and has a legal title against the insurance company. Decisions on such plans can be made independent of discussions with the internal staff council. There are no limitations on maximum pensions and the policy holder, the employer, may cease payment of the premiums should the circumstances deteriorate drastically or if the legislation should make this advisable. However, approval must be obtained in such a case. While employes have a direct claim, personal contributions to the plan are possible, though uncommon.

Employer contributions qualify as corporate expenses, but they are considered taxable income to the employe inasmuch as they exceed DM 312 per annum. This amount of DM 312 is a fixed tax free allowance (extremely nominal), enabling the employer to make provisions for the employe's security for the future. Premiums in excess of this sum are subjected to income tax at the employe's own top rate. As an alternative the employer may now take over this liability by paying a flat rate tax of 10% of assessable premium.

The assessable premium may not exceed DM 2,400 per annum per employe, or on a group basis the average of the premium should not exceed DM 2,400. In order to determine the average it is specifically barred to include those employers whose premiums exceed DM 3,600 per annum. The employes may set off the excess portions, if any, against their tax deductible "special personal expenses" (Sonderausgaben) whose limits have been considerably increased as per the Income Tax law of 1974—effective 1st January, 1975.

While contributions to directly insured plans are taxed, the emerging benefits receive favorable tax treatment. Lump sum benefits may be received tax free and the pensions are taxed only on that part which is considered to be the interest content.

Pension funds as funding vehicles are defined as legal set-ups which provide legal title to benefits to its members and their dependents. Basically these are considered as captive life insurance companies that are subject to the control of the Federal Insurace Supervisory Authority. The appropriations to the fund are governed by the Income Tax Law and they have been greatly improved by the recent tax reform, particularly by single premium allocations.

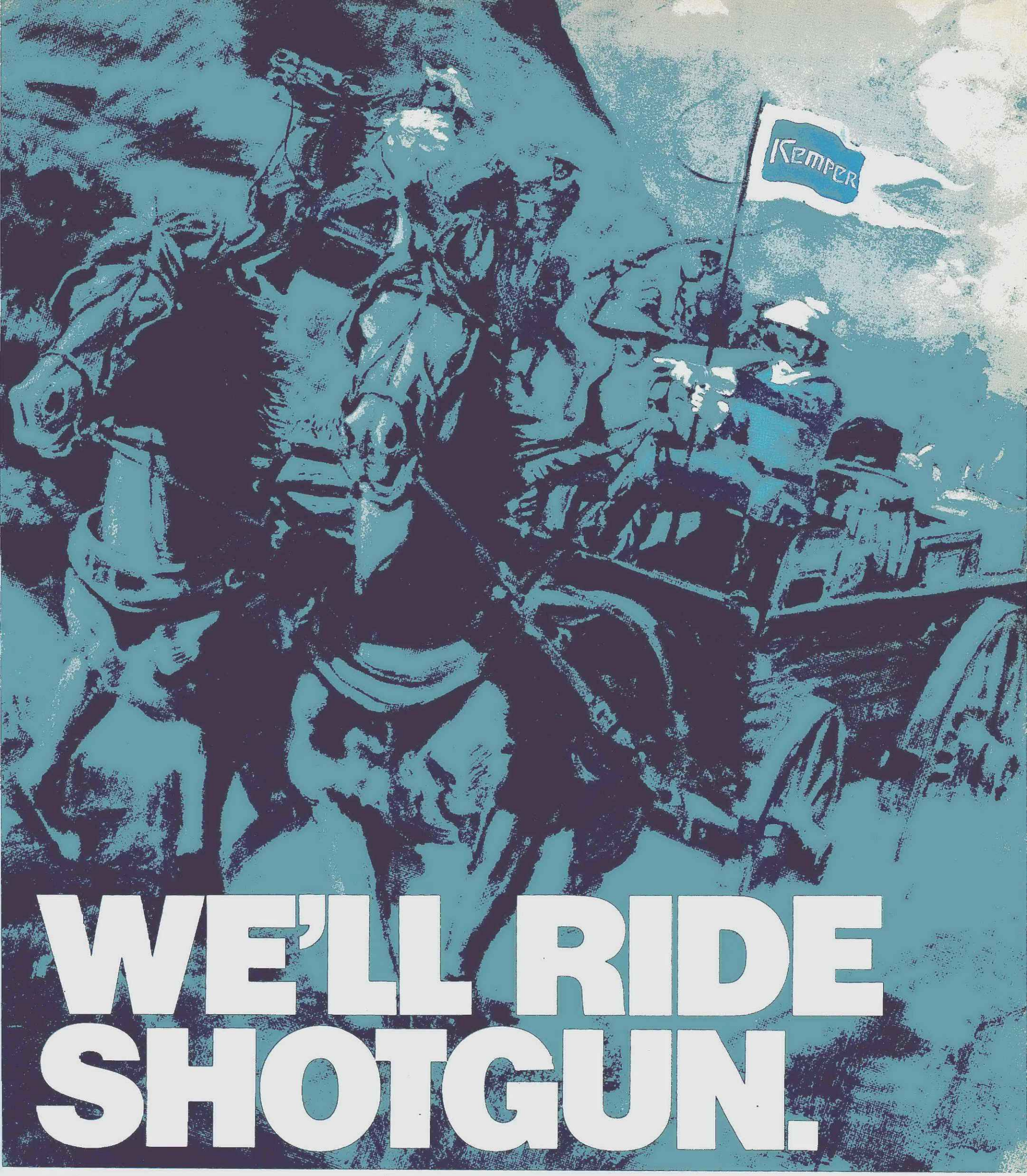
The allocations to the fund are a tax deductible corporate expense provided they are calculated in accordance with the plan guidelines and the regulations of the supervisory authority. There are some upper limits on the amount of benefits which must be watched. Since the contributions to the fund are additional taxable income to its members, their fiscal treatment is the same as those under directly insured plans. The staff council must have representation in the fund. Intricate administration and investment restrictions etc. make this system less attractive for companies of smaller size. The fund may be established by one (Einzelpensionskasse) or more profit organizations together (Gruppenpensionskasse).

Pension reserve plans are commonly used to fund the benefits. In order to obtain a taxation advantage, the employer must issue a binding promise to his employes that the pledged benefits will be paid on fulfillment of the plan conditions. Reserves sufficient to meet the future liability due employes must be created according to the recognized actuarial tables and the total annual transfer be deducted from the profits before the corporate tax is assessed. The accumulated liability is shown on the debit side of the balance, thus the reserves not only produce an income tax savings but also a saving in the property tax since the accumulated liability suppresses the taxable assets.

The company is in no way obliged to isolate the reserves, hence they may be used for general company requirements. Therefore, the system provides an additional temporary liquidity, an interest free loan, which is especially of interest to the producing companies.

As benefits become due, the employer must realize the reserves that result in taxable income. The annuities which are paid to the beneficiaries are corporate tax deductible expense. In the future the recognizable reserves may be established for the financial year during which the pension pledge is issued. However, that financial year may not be designated before the middle of the year in which the plan member reaches age 30. The new actuarial formulae (Teilwert) approved for establishment of reserves in contrast to the older formulae (Gegenwartswert) has abrogated the prohibition on funding of past service thus allows to evaluate and fund the liabilities realistically. ■

Mr. Singh graduated from the University of Cincinnati in 1972 where he received a Master of Business Administration degree. For the past two years he has been employed by Noble Lowndes Deuthschland GmbH, a company of the Hill Samuel Group of U.K. His particular area of work has been in employe benefit planning.



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What will prompt early retirement?

NEW YORK—A consulting actuarial firm found that if an employer offered a maximum of two years' salary as an inducement, most older employes would opt for early retirement voluntarily.

One company discovered this arrangement after trying to determine how much money it would take to make an executive indifferent toward retiring or continuing to work, and how much more it would take to tip the balance in favor of retiring, according to a survey conducted recently by Towers, Perrin, Forster & Crosby (TPF&C).

Among its other findings is the conclusion that early retirement is a "growing way of life in the U.S." Most companies studied believe that executive early retirement would become more widespread, the TPF&C report stated.

"There are indications that in today's uncertain economy, early retirements in the next few years may result more from company wish than executive desire," it stated. "But in the long run, early retirements may well continue to be voluntary," the report added.

Some of the special arrangements frequently encountered by TPF&C consultants were:

- Lump-sum payments—two months' salary for each year of service up to a maximum of two years' salary;
- Pension supplements—upon retirement at age 62, the executive received an amount sufficient to bring his total income up to the level it probably would have been had he worked until normal retirement age; or
- Consulting arrangements—an executive would receive 50% of final salary until normal retirement age as long as he was available for up to 60 days a year to perform work required by the company.

"Regardless of benefits available," the report continued, "voluntary retirement patterns tended to follow established social norms within the companies. For example, in several companies age 63 was the socially accepted early retirement age . . . Even if executives in these companies were given the opportunity to retire at an earlier age with a satisfactory level of income, most would have selected to remain until age 63," the reported stated.

Why have organizations developed special arrangements above and beyond normal pension plans to facilitate and encourage their executives' early retirement? TPF&C listed several problems that appear to have contributed to the trend:

"Overstaffing in management ranks and redundancies as a result of mergers and acquisitions; limited opportunity for upward mobility; and executive obsolescence in an environment of continually accelerating change."

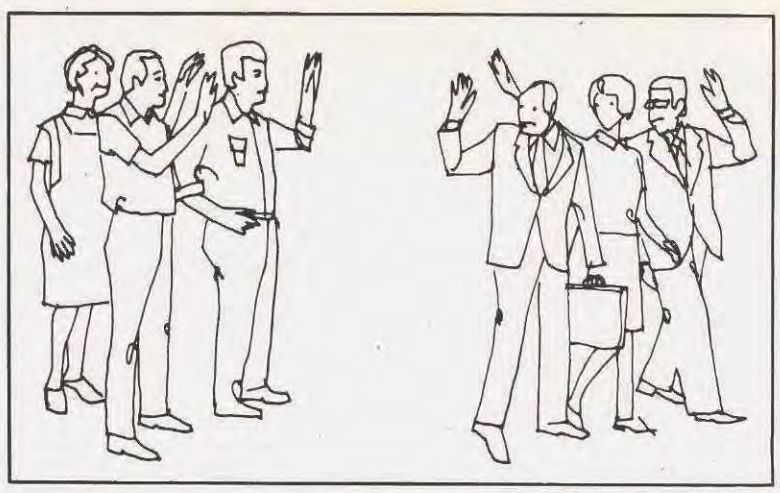
To gather meaningful information on the various executive retirement approaches, TPF&C said it studied the practices of "28 major organizations."

Its survey found that during the past five years, approximately 75% of the executive retirements took place before age 65.

Most executives retired between the ages of 62 and 63, the survey found, and most of these retirements seemed to be voluntary from the executives' standpoint. However, it found that some executives did retire at "management's urging."

An executive's decision to retire early voluntarily seemed to be "strongly influenced by assurances that they would be able to maintain satisfactory standards of living after retirement," the report stated.

"Personal net worth played a role in guaranteeing this standard," the report continued. But the major assurance came from "a combination of benefits provided by the company's qualified pension plan and the special executive retirement arrangements," it stated. ■



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"Indeed, if enterprising magazines like BUSINESS INSURANCE continue to send star women editors to interview Chairman, Deputy Chairmen and Lloyd's Committee Members, we shall soon be stripped bare. (Incidentally, if Ms. Alt is here I'd like to thank her for reporting me lengthily, accurately, though, regretfully, I felt, with a certain lack of conviction!)"

—From a speech by Leslie R. Dew,
Senior Deputy Chairman, Lloyd's of London,
given at the Risk and Insurance Management Society's
13th annual conference in Dallas,
April 24, 1975.

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Fiduciary premium tied to money adviser type

DALLAS—Pricing of fiduciary insurance policies is, in many cases, geared directly to the insured's affiliation with investment management, a workshop on special liability coverages was told here.

Joseph P. DeAlessandro, senior vp of American International Group; C. Paul Kipp, insurance manager of the U.S. Gypsum Co.; and Sheldon Staubitz, director of risk management for Chemetron Corp., ran a liability workshop at the 13th annual conference of the Risk and Insurance Management Society.

Fiduciary liability was the topic in which most of the audience showed the keenest interest, followed closely by directors' and officers' liability. Mr. DeAlessandro, presenting the underwriter's viewpoint, said that his company's affiliate, National Union Fire Insurance Co., a principal writer of fiduciary cover, would give more premium credit to an insured pension plan than to a trusteed plan.

He also told insurance buyers that premium credit recognition would go to companies which handled their investments through outside portfolio managers rather than doing it themselves in-house.

"Our investment counsel has asked to be included in our fiduciary liability coverage. Should we?" was a question Mr. Kipp raised, both for himself, and for the risk managers faced with the complexities of the new coverage.

Mr. DeAlessandro advised against including outside investment counsel in a company's own fiduciary liability coverage, although he acknowledged that some markets, including Aetna Life & Casualty, do make such coverage available.

"My idea is that I am hiring a professional to provide me a service. I don't see any reason to protect him for what he is supposed to be doing for me," said Mr. DeAlessandro, a lawyer.

He said he already had heard of five claims in instances of fiduciary liability coverage. Two were discrimination suits, two are class actions and the third is a straddle liability that involves actuaries, accountants and the employe benefit plan, he said.

Shifting to a discussion of directors' and officers' liability coverages, Mr. DeAlessandro said an "average" limit for D&O cover was $3 million a few years ago, but that it later edged up to $5 million, and this year is getting to be in the $10 million area.

The banking field faces "very severe potential" risk in the directors' and officers' liability area, he said, citing "six-figure premiums."

He cautioned the audience against trying to use premature statistics on loss ratios in D&O cases, because many of them drag on for years, and their full impact has to include research and defense costs.

AIG's "shop" has more than 400 D&O claims at present, he said. A substantial number of these will be closed with no amount beyond the deductible, however. A very small part of the claims would be major losses, with loss ratios that could reach 60% or 70%, he said.

Mr. Giff said the whole question of definitions was a problem insurance buyers faced when dealing with underwriters in fashioning directors' and officers' liability coverages.

"The industry will not define certain circumstances. They say 'Wait until the claim comes in, then we'll tell you whether it's excluded or not.' If a director or officer is held liable for treble damages in a civil suit in antitrust, is the treble suit excluded as a fine or penalty?" Mr. Gigg wanted to know.

Mr. DeAlessandro said the insurance industry does not have a "laundry list" of exclusions, but faces a problem of legal judgment in D&O cases. He suggested letting the courts say whether a corporate reimbursement was permissable or admissable.

Mr. Giff shot back that the insurance industry left buyers "on the horns of a dilemma" over just where jurisdiction is—whether it is where the policy is written, where the corporation is headquartered, or where the court case is actually held.

Mr. Giff said his company now has a policy endorsed to identify the jurisdiction as the area of incorporation.

However, Mr. DeAlessandro told the audience tht such a move could leave a buyer open to the possibility of a secondary action, for instance, where one state's judgment contradicts the law of another state involved in the case. ■

War loss . . .

Continued from page 1

"Our OPIC coverage is nominal and limited to storage facilities."

"All I can tell you is that we didn't have personal liability over there (Vietnam) and that of the $50.3 million total insured amount, our share is considerably less than the $300,000 part," he said.

The policy, written "basically" by the Insurance Co. of North America, was part of a worldwide coverage He was unable to isolate the limits that apply solely to Vietnam or Cambodia

The Associated Press reported on its wires in early May just after the fall of Saigon and Phnom Penh that some $60 million in investments of U.S. companies were abandoned. This figure, however, did not include solely fixed investments. It represented also money paid to the South Vietnamese government for such things as offshore oil exploration rights.

INA's international department said last week that it knew of no major insured claim that had come out of Cambodia or Vietnam since the takeover.

American International Underwriters echoed that view. H. H. Freeman, regional manager for the Far East, including South Vietnam, told *Business Insurance* no word had reached AIU of any major claim. AIU writes approximately $3 million a year premium business in Vietnam, and does not include war risks on land coverage, Mr. Freeman noted.

He explained that war risks might be typically covered on travel accident policies and possibly on marine policies, but seldom on property.

AIU's own Saigon office has been nationalized, but little communication has come through to the U.S. headquarters since the Communist victory.

It could be some time before the exact policy limits of legitimate claims become known. An OPIC spokesman explained that although the agency had originally insured the five previously mentioned companies for $50.3 million, that "original maximum" had dwindled appreciably over the years.

Some of the insureds put portions of their OPIC coverage on a "standby" basis. On standby, an insured doesn't actually have the coverage stated in the original maximum limit, but is entitled to convert back to the original coverage on the anniversary date of the original policy.

"So while the original maximum was $50.3 million in coverage for the five companies, not all of them were on a current basis for our expropriation, inconvertibility of funds, and war and revolutionary coverage lines," the OPIC spokesman explained. ■

Pension hike in works for plan retirees

PITTSBURGH—Westinghouse Electric Corp. will increase pension benefits for most of its retirees, in some cases as much as 12%. Company chairman Robert E. Kirby announced the increases effective July 1. This will apply to men and women who retired before January of this year.

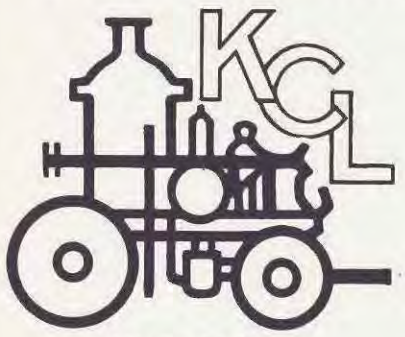
Employes who retired prior to 1971 can expect increases ranging up to the full 12%, while most recent retirees will get somewhat smaller benefit boosts.

A company spokesman told *Business Insurance* that the benefit increases were a management decision, and were not connected with collective bargaining agreements.

Administration for the benefits will be handled in-house, he said. He declined comment on how much the increases would cost Westinghouse to initiate and maintain.

Social Security benefits will be increased in June for retirees just before the Westinghouse pension improvements take effect. Chairman Kirby pointed out that the combination of increases from Social Security and company benefits should help retirees cope with rising costs. ■

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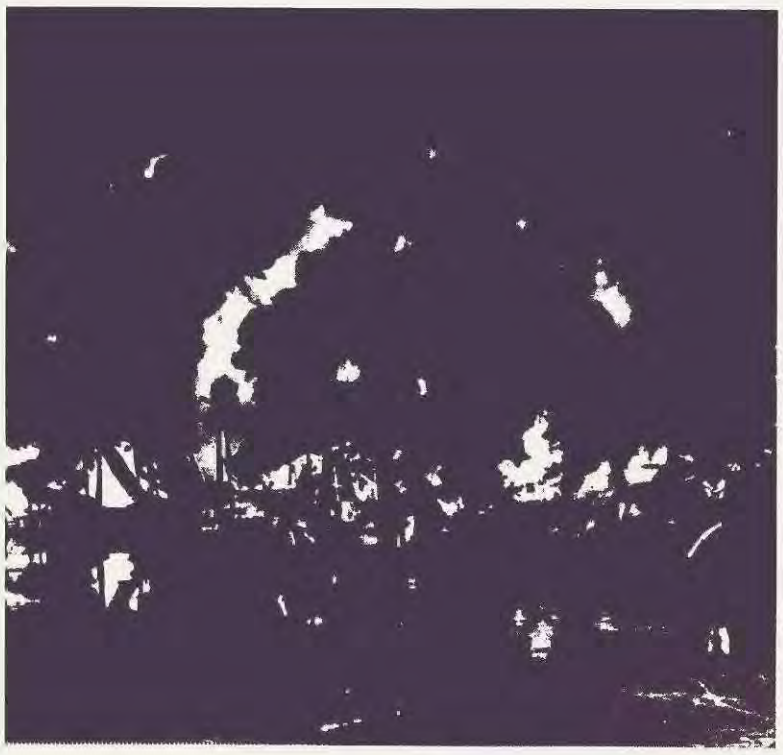
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Policy negotiations require marketing trips, thorough homework: Managers

By ELISABETH M. WECHSLER

DALLAS—"A risk manager who's not keeping abreast of activities in his own field can't assess a broker's ideas," said Allon J. Greene, property and casualty risk manager for Burmah Oil & Gas Co., Houston.

"Most buyers are told that they have a special deal on their coverage, so they're closed-mouthed," he continued. "But there aren't many special deals."

The trouble is, Mr. Greene explained, is that same risk managers expect the same arrangements as someone else's but the risk may not be the same.

Negotiating coverage with brokers and underwriters is a critical part of the risk management process but price isn't the only proof of the pudding, according to Mr. Greene, who was among risk managers polled at the 13th annual Risk and Insurance Management conference here on the subject of insurance contract negotiations.

He advised risk managers to "plan ahead and set cost parameters" for risk. "If it's below a certain amount, it indicates the carrier is low balling—that is not interested in a long term relationship," Mr. Greene said. "They just want to get the account. Above a certain amount, we would probably self-insure the risks," adding that he is "more inclined to self-insure than most other risk managers."

Clayton E. Carlson, director of corporate insurance at Boise Cascade Corp., Boise, believes that "when you go into negotiations of risk, the buyer should have pretty well in mind the parameters within which he'll place the insurance, such as pricing deductibles and should know what he's after and breadth of contract. The buyer should know what he's after and not search the market," he added.

"Don't be afraid to use different brokers for different problems," Mr. Carlson said.

"My view of risk management is that it's not better-deal oriented," said A. Gordon Hanau, risk manager for Consolidated Natural Gas Service Co. Inc., Pittsburgh. "They've been deal and transaction view oriented too long."

Mr. Hanau advised risk managers to "make the broker tell you what he's going to do and ask questions. Some people probably don't even ask what the broker's commission is," he said.

"Develop long term relationships with brokers," advised Dennis Tweedale, risk manager for the city of Madison, Wi. "For municipalities we must get the law changed about putting insurance contracts out to bid every year. It's a waste of time."

"The risk manager must be more involved in the marketing process, although there are times when it's better not to have the buyer present," said J. William Sherar, president of Armistead Miller Wallace Inc., the Nashville-based brokerage firm.

"In initial discussions it's good to have the risk manager present," Mr. Sherar continued. "But in the final negotiations, it's better not to because underwriters are reluctant to criticize the risk with the buyer present," he added. Mr. Sherar recently brokered a $342 million coverage plan for a North Sea platform to be operated by Burmah and other oil companies.

"If the buyer doesn't trust a broker and doesn't go along on the marketing trips, he could be dissatisfied," Mr. Greene said. "You must be able to rely on your broker and believe that he has integrity. It's also important for a broker to have good ideas. I bounce ideas off them," he said.

Mr. Greene suggested getting feedback from other risk managers on brokers and planting questions in conversations with prospective brokers to avoid getting a yes-man. "I don't want someone who will agree with everything I say," he explained.

"You should appraise the broker face to face as a negotiator," Mr. Greene said, adding that the buyer likewise should come face to face with the underwriter.

"You must have an exchange of confidence between negotiating parties," Mr. Carlson of Boise Cascade said. "Don't try to go into negotiations with something under the table. There must be mutual respect."

Albert J. Howard, vp and risk manager for Western Bancorporation, Los Angeles, agrees. "You must make an appraisal of the individual abilities of those bidding."

"Get your broker to your place of employment to evaluate what must be done," Mr. Tweedale of Madison said. "It's important for him to visualize the risk."

"If you're operating in a broad market, operate it as a turkey shoot," Mr. Howard said. "The best guy wins. In a narrow market, you must pick the best broker."

"There's a price that's fair to all parties," Mr. Greene said, "because in the long run it's better for risk managers. If underwriters and brokers think they've got a fair price, they'll be more likely to give permanent cover," he added.

"The underwriters' manual is a very valuable tool," Mr. Greene continued. "Included should be a brief description of the risk itself, plot plans or photos, loss information, a description of loss prevention programs and results and factors affecting the risk (such as weather, personnel)."

"Risk managers must become more quantitative," Mr. Howard said. "The use of computers by risk managers is still primitive. They need to learn how to use the tools."

Mr. Greene suggested using computers for probability studies and trying to project future losses through computer analysis. "Loss experience, broken down, gives the best analysis," he said.

"The real challenge for a risk manager is using each component —broker, in-house engineer or outside consultant—to its best advantage," Mr. Howard said.

"Management skills are the most important factor," said David Warren, of Warren, McVeigh, Griffin & Huntington, West Coast-based risk management consultants. "If he doesn't have them, nothing else will help him," he added.

Mr. Howard concurred: "If you've got it, you can always sharpen it." ■

INA division alters work comp units

LOS ANGELES—Pacific Employers Insurance Co. (PEG), a subsidiary of the Insurance Co. of North America (INA), announced a major reorganization aimed at achieving a stronger authority and control over its workers' compensation line in the national INA service office system.

PEG's regional underwriting units have been strengthened by the addition of three regional home office underwriting managers. The new unit has been named CID (Commercial Insurance Department) Field Management—Workers' Compensation. It is headed by Chuck Farris, vp, CID field management—workers' compensation.

At the same time, the regional marketing operation has been discontinued.

"The object of the change is to refine our workers' compensation underwriting operation," a spokesman said, noting the heavy losses experienced by workers' compensation underwriters last year. ■

New reinsurer formed

Leo B. Menner & Co. Inc., Elgin, Il., underwriting managers for domestic and foreign insurance companies, formed a separate reinsurance facility known as Menner Reinsurance Agency Inc. in Freeport, Il. A spokesman noted it may be one of the few expansions in reinsurance this year.

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March	—	—	35,530	—	35,530
April	16,747	17,718	17,812	—	17,812
May	24,129	25,528	10,002	—	10,002
June	30,763	32,547	2,983	—	2,983
July	12,535	13,262	22,268	—	22,268
August	26,366	27,895	7,635	—	7,635
September	28,321	29,964	5,566	—	5,566
October	31,816	33,661	1,869	—	1,869
November	38,858	41,112	– 5,582	—	– 5,582
December	22,883	24,210	11,320	—	11,320
January	16,993	17,979	17,551	—	17,551
Total	$249,411	$263,876	$162,484	$40,565	$121,919

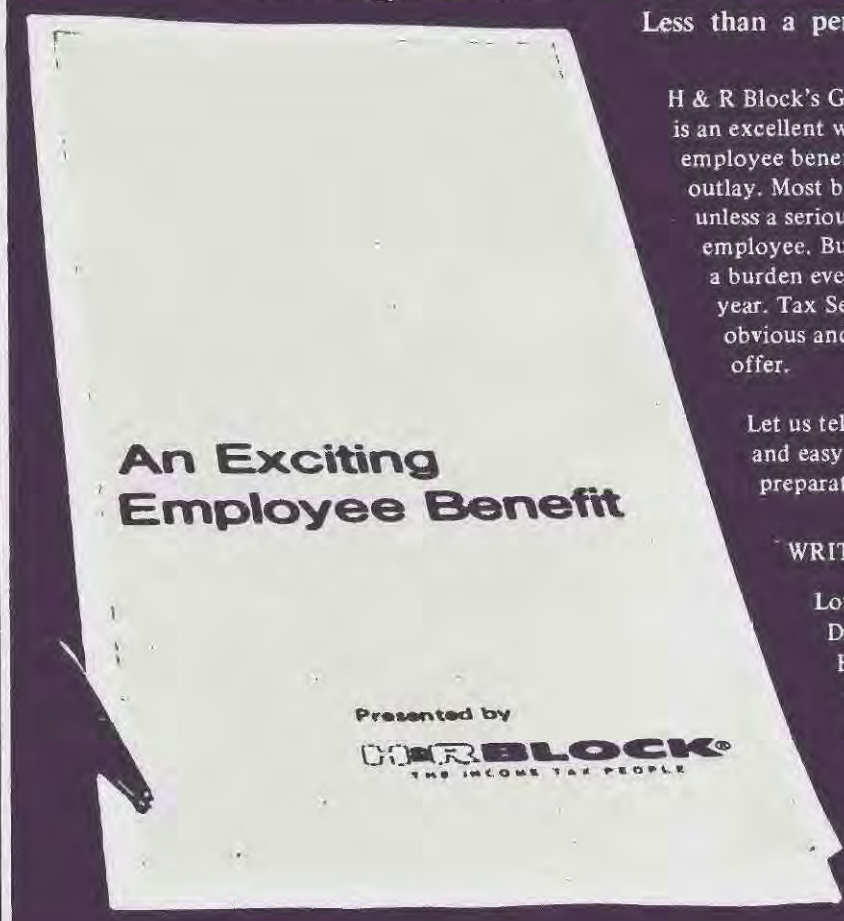
Note: This is an illustration of a claim payment pattern that could be expected in the first year of a case.

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Union official calls for immediate pension cover

WASHINGTON—A top official of the United Auto Workers (UAW) union has urged that insurance to cover the "contingent liabilities" of employers under the pension reform act be made available no later than next January 1.

A spokesman for the Pension Benefit Guaranty Corp. (PBGC) told *Business Insurance*, however, that only a "crash program" could have the insurance available by the January 1 deadline.

PBGC is directed, under the law, to develop a contingent liability insurance plan by September, 1977.

Under the plan termination insurance provisions of the law, employers sponsoring defined benefit pension plans are liable for up to 30% of their net worth if they terminate an underfunded plan.

The lien on employer assets is held by PBGC, which would have to make good on any shortages in the terminated pension fund.

"We urge the authorities involved to expedite this process," Melvin A. Glasser, director of the UAW's Social Security Department, testified before Rep. John Dent's (D-Pa.) Subcommittee on Labor Standards.

The subcommitte was holding the first "oversight" hearings on implementation of the pension reform law since the bill was signed by President Ford last September.

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

"It also means," he said, "that retirees are in danger of having their benefits frozen at their present levels. The situation is serious and we suggest it be given priority attention either by departmental action or by the Congress."

Mr. Glasser said that in the past few years about 40 pension plans covering UAW workers had terminated each year.

"But we are feeling the effects of the economic recession," he said. "In the first three months of 1975 we find we are involved with 25 pension plans which employers have informed us they plan to terminate."

UAW members are covered by about 1,500 separate, and mostly small, pension plans, Mr. Glasser said.

PBGC is given latitude to arrange its own contingent liability coverage, or work with private firms such as banks or insurance companies.

"We've had some very preliminary explorations," a PBGC spokesman said, "sounding out a few companies informally.

"We haven't gotten anything definitive," he added. "Frankly, it hasn't been a top priority program."

The employer liability feature of the pension law's termination insurance provisions was hotly debated in the final drafting of the law last year.

Critics of the liability, most notably Rep. John N. Erlenborn (R-Il.), ranking Republican on the House Labor Standards Subcommittee are expected to renew criticism of the liability feature as "technical" amendments to the law are debated in the House later this year. ■

Endorse no-fault

The American Insurance Assn. (AIA) endorsed a no-fault auto insurance in the Illinois legislature which provides for unlimited coverage for medical and rehabilitation expenses and covers 85% of lost wages for up to three years. Modeled after the Michigan state no-fault auto law, the proposed Illinois bill offers "the broadest medical benefits," according to the AIA. "It would make the Illinois auto accident insurance system a viable and efficient method for compensating victims of automobile accidents," said William Gibson, AIA regional vp.

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Firms upgrade property protection systems

DALLAS—Some major U.S.-based multinational corporations are in the process of spending between $100,000 and $60 million to upgrade property protection systems in overseas facilities, as part of the continued trend toward centralization of international risk management programs, said William Goodall Jr., chairman and chief executive of Allendale Mutual Insurance Co.

His company, the largest of the four insurers in the Factory Mutual System, is currently working with a U.S.-based corporate client which is implementing a $60 million sprinkler program over three years for over 100 overseas facilities located mainly in Europe. This client has both old and new plants, said Mr. Goodall in an interview during the 13th annual conference of the Risk and Insurance Management Society here. He declined, however, to disclose the identity of the corporate client.

These comments arose during a discussion of the growth of FM Ltd. overseas, which accounts for only about 6% of Factory Mutual's total business, but is growing at the phenomenal rate of about 40% a year, said Mr. Goodall. Allendale controls about 80% of all the business done by FM Ltd., he noted. FM Ltd. currently has a staff of about 120 people abroad, with an expansion to about 150 planned by year-end. This includes 52 property engineers, with plans for about 72 staff engineers by the end of 1975.

"We're really only trying to accommodate U.S. companies (clients) overseas" instead of looking to expand the business by acquiring new clients based in Europe, said Mr. Goodall. He noted this is because FM is having trouble keeping up with the demand for its services overseas, so that the staffing problem alone is holding back the growth of FM Ltd. "But we do have a couple of large foreign companies as accounts," such as Hoogevens in the Netherlands, a division of Royal Dutch Petroleum, Mr. Goodall added.

He sees a fast-changing attitude in Europe towards property protection. "They've not had any loss prevention engineering of our type before," relying on systems such as hand firefighting teams to douse blazes. "As European companies stepped up their production and built bigger industrial facilities, however, the fire record changed," he said. "The impetus for protection overseas has come mainly from our clients over here who asked us to help them in Europe," he continued.

Mr. Goodall said Allendale has done "a lot of work" overseas for clients ranging from ITT to Schlumberger, also counting among the ranks of FM clients abroad such giants as Scovill, Kaiser Aluminum & Chemical, Union Carbide, Alcoa, Alcan, IBM and Control Date.

The approach to property protection overseas is, of necessity, somewhat different than an engineering project in the U.S., Mr. Goodall said. "The doing part of the job is different. For example, evaluating the water supply in an old town of Germany is a whole different thing from here."

Installing property protection systems, namely sprinklers, in buildings already in use can be costly, said Mr. Goodall. Sprinklers installed in a highrise structure when it is built add approximately 3% to 4% to the cost of construction, but can cost as much as 15% extra if a special hazard situation is involved. "In an older facility, it would run 5% to 10% of replacement cost to install sprinklers, averaging about 7%."

Mr. Goodall said it is not uncommon today to see situations where companies spend anywhere from $100,000 up to $6 million to protect older facilities.

Allendale's vp-international, Joseph DeChristofaro, said he is working mainly on facilities which are basically unprotected, "particularly in Germany and France, where we are working with postwar, massive multi-story buildings."

As examples of the commitment some corporations are making to property protection in the U.S. style, he cited instances including:

- a U.S.-based corporation with facilities in Australia which is spending $1.4 million in a one year time span for pumps and sprinklers to protect those facilities;
- a client which two years ago decided to spend $4 million to upgrade protection for 16 facilities over several years;
- the subsidiary of a U.S. corporation which is spending close to $5 million to protect plants, over a period of six years.

But the change is attitude toward property protection in Europe may be hampered somewhat over the near term by highly competitive property insurance markets in Europe, Mr. DeChristofaro fears. "In the early 1970s, there was a series of large losses in Germany because of no protection over there, causing the markets to tighten. But now they are loosening up again," he noted.

The increased emphasis on property conservation is prompting more U.S. insurers besides FM to look for expansion abroad, noted Mr. Goodall. He said the firm's biggest competition abroad is coming from AFIA, AIU "and, of late, Kemper" who are all pushing into Europe and Australia.

"We see the European, U.K. (Britain) and Australian markets for HPR protection as being as big as the total North American market," said Mr. Goodall. Allendale is providing engineering services overseas through FM Ltd. on a fee basis, "but we don't promote" that aspect of the business, he also said. ■

Propose code overhaul

A complete overhaul of the Pennsylvania insurance code would be the result of legislation proposed before the state's general assembly and backed by both Gov. Milton Shapp and Insurance Commissioner William J. Sheppard. The proposed law would establish a 13-member revision commission to study present laws and make recommendaitons to the general assembly for their revision and recodification. The measure, modeled after similar legislation in Wisconsin, would update the present code, written more than 50 years ago and termed "hopelessly inadequate to deal with the size and complexity of today's insurance industry," Commissioner Sheppard said.

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- **International Risk Management:** A guide to the problems and their solutions in Asia, Africa, the Middle East and South America.
- **Natural Hazards—Earthquakes, Floods and Windstorms:** How you are fixed geographically and, if there's an exposure, how should you cover it? How are such hazards and disasters measured? The report will also delve into the various government disaster insurance programs available or on the drawing boards.
- **The Risk Management Function in Mangement:** Given the evolution of the risk management function—from clerk to buyer to manager—where should today's risk manager belong in the organization of his company? Who should he report to . . . and who should report to him? What administrative scope should his function encompass?
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Report hails Wometco risk department

THE CORPORATE risk management department of Miami-based Wometco Enterprises Inc. was singled out for special mention in the publicly-held firms newly-released annual report for 1974. "We are the first company that I know of to give special recognition in the annual report to the risk management department," says **Cal B. Rosenbaum,** Wometco's vp-risk management and insurance. The report notes that the department is "an integral part" of the company's management structure. The department's primary job is protecting the corporation, its assets, and its earnings from the financial impact of a loss from the destruction or theft of assets; interruption of income; incurring of extra, unforeseen or unplanned expenses; legal liability; and the loss of key personnel through death, disability or retirement.

The report's corporate overview section went on to say: "We look to this department for an analysis of risks to which we are or may be exposed, the selection of a variety of techniques by which these risks may be eliminated or reduced, and, finally, for the procurement of insurance contracts that will provide us with the proper indemnification in the event that risks result in financial loss." The report also carried Mr. Rosenbaum's picture among those of other officers of the company. He was named a vp of Wometco in late 1974, after being director of risk management-insurance since 1973.

* * *

Lawrence J. Salerno joined International Telephone & Telegraph Corp. (ITT) in New York City on May 1 as assistant director of insurance, reporting to Don Fraser, director of corporate insurance for ITT. Mr. Salerno was formerly with Bethlehem Steel Corp. in Bethlehem, Pa. as assistant insurance manager for eight months. Before that, he was corporate insurance director for Mack Trucks Inc., Allentown, Pa. for five years The position at ITT filled by Mr. Salerno had been open for about a year. No replacement has yet been named at Bethlehem Steel, said Wilmer Hough, corporate insurance manager..

* * *

ITT Rayonier Inc., New York, named **Michael F. McCarthy** director of risk management. He reports to R. Alan Prosswimmer, treasurer. Mr. McCarthy replaced **Michael A. Waskom,** who left the company last August to become risk manager, a newly-created position for Chesebrough-Pond's Inc., Greenwich, Ct. Mr. McCarthy previously was insurance manager at Crawford & Russell Inc., Stamford, Ct. and was replaced there by **Luke Halley,** as reported earlier.

* * *

Xerox Corp., Stamford, Ct. transferred **Robert Sjogren** to manager of benefits development from the educational group on May 5. He reports to Peter Biggins, manager of corporate benefits. Mr. Sjogren replaces **Philip J. Canfield** who left Xerox for W. R. Grace & Co., New York as reported earlier.

* * *

John C. Lipscomb was appointed risk and insurance manager of Kirby Industries Inc., Houston headquarters in mid-April. It is a newly-created position. Mr. Lipscomb reports to George Peterkin Jr., president. Previously, Mr. Lipscomb was assistant vp of Highlands Insurance Co. Before that, he was resident vp and manager of Mission Equities Group's Houston office. ■

dates for buyers

May 27-29: The American Insurance Assn.'s annual Administrative Engineers Conference at the O'Hare Hilton in Chicago will cover a wide range of loss control and risk management subjects, such as legal liability in safety engineering, environmental health, fire problems and product liability. For more information, contact William Gordon at the association. Address: 85 John St., New York, N.Y. 10038.

May 28: The International Foundation of Employe Benefit Plans will hold a seminar on rules and regulations of ERISA affecting joint trusts in New York (also Chicago—May 29, and San Francisco—May 30). Trustees, administrators and others will have an opportunity to express their opinions and concerns about the upcoming regulations directly to the government officials responsible for administering the pension law. Information may be obtained from the foundation at P.O. Box 69, Brookfield, Wi. 53005.

June 1-4: The International Foundation of Employe Benefit Plans is holding a meeting in San Francisco on benefit plans for workers in the graphic arts trades. For more information write the foundation at P.O. Box 69, Brookfield, Wi. 53005.

June 2-4: The American Management Assn. is holding a meeting on "Managing the Corporate Employes Benefit Function" in New York (also Chicago, June 16-18). For more information write the AMA, 135 W. 50th St., New York, N.Y. 10020.

June 5-6: The Society of Actuaries will hold a meeting at the Omaha Hilton hotel in Omaha, Nb. For more information, contact James Harrison, North Carolina Mutual Life Insurance Co., Durham, N.C. 27701.

June 5-6: Managing Political Risk is the subject of an American Management Assn. course to be held in New York. For more information write to the AMA, 135 W. 50th St., New York, N.Y. 10020.

June 8-13: The first session of a permanent Benefit Plan Administrator's Institute will be held at the University of Wisconsin's Milwaukee campus. The five-day seminar, co-sponsored by the university and Charles D. Spencer & Assoc. Inc., Chicago, will provide a training ground for the newcomer to employe benefit plans, as well as lectures and workshops for the experienced administrator. For more information, contact Barbara Gracious, institute coordinator, Charles D. Spencer & Assoc., 222 W. Adams St., Chicago, Il.

June 9-13: One-day regional seminars, sponsored by the International Foundation of Employe Benefit Plans, will be held in these Canadian cities: Halifax, Montreal, Toronto, Calgary and Vancouver. Additional information can be obtained from the foundation at P.O. Box 69, Brookfield, Wi. 53005.

June 16: Health Maintenance Organizations in New Jersey will be the subject of an all-day conference sponsored by the Personnel Discussion Panel, Newark Chamber of Commerce and the New Jersey Department of Health. Exhibits by the state's developing HMOs and speakers from HEW, major New Jersey employers and state agencies will be featured. For more information contact Richard Quinn, Personnel Discussion Panel, P.O. Box 570, Room 8357, Newark, N.J. 07101.

June 16-18: The American Management Assn. is holding a seminar on the fundamental of employe benefits, in Chicago. For more information, contact the AMA, 135 W. 50th St., New York, N.Y. 10020.

June 20: The Puget Sound chapter of the American Society for Industrial Security will hold a national regional seminar and exhibits in Seattle. For more information contact Sally Ann Mowrey, 729 N. 184th St., Seattle, Wa. 98133.

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

Natl. health infighting continues

WASHINGTON—The House Commerce and Health Committee last month took another step in staking out its jurisidictional claim over national health insurance legislation.

Rep. John E. Moss (D-Ca.) said his Subcommittee on Oversight and Investigations would begin by early summer a study into the problems of cost, quality, and accessibility of health care in this country.

Rep. Moss said the primary focus of the study will be "getting ready for national health insurance." He said the study would be designed to assist the legislative activities of another unit of the Commerce and Health Committee—Rep. Paul G. Roger's (D-Fl.) Subcommittee on Health and Environment.

The Commerce and Health Subcommittee is already engaged in preliminary jurisidictonal sparring with the House Ways and Means Committee over extending health insurance benefits to laid-off workers.

Similar jurisidictional disputes are expected over national health insurance in the Senate, where the chief contender is the Finance Committee followed by the Labor and Public Welfare Committee. ■

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- ☐ Light Manufacturers
- ☐ Others (please specify)_____

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Title_____

Company_____

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