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update

Judge orders FAA to pay World Airways $11.9 million

BOSTON—A federal judge has ordered the Federal Aviation Administration to pay World Airways $11.9 million, representing half of the $23.7 million in damages the airline sustained in the 1982 crash of a DC-10 at Boston's Logan International Airport.

The World Airways DC-10, carrying 196 passengers and 12 crew members, slid off an icy runway

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Photo: Kathryn J. McIntyre

The stately Greenbrier in White Sulphur Springs, W.Va., was the site of the annual joint meeting of NACSA and NACSE.

Competition back? Viewpoints differ

By KATHRYN J. McINTYRE

WHITE SULPHUR SPRINGS, W.Va.—Competition is returning to the property/casualty insurance business—depending upon how you define competition and your perspective.

If you define competition as insurers talking about new accounts, possibly resuming underwriting of "the best" of the riskiest business rejected over the past 12-18 months and providing additional limits—while at the same time some accounts are shopping around for smaller premium increases—then competition is back.

That's the perspective of many insurance brokerage executives.

But, if you define competition as insurers slashing rates, pricing policies based on what it takes to get the business and issuing policies without concern for the risks assumed, then competition is not back.

That's the perspective of many insurance company executives.

Regardless of one's definition of competition, everyone agrees that conditions in the property/casualty insurance business are stabilizing. Rate hikes are subsiding and capacity is loosening up.

But, that's not true in the reinsurance business. Reinsurance executives generally are united in their opinion that the reinsurance business—having suffered worse losses than the primary insurance companies—is staying expensive and tight.

These are the observations drawn from formal and informal discussions with the chief executives of the largest property/casualty insurance companies, agencies, brokerages and reinsurance companies at the 60th annual joint meeting of the National Assn. of Casualty & Surety Agents and the National Assn. of Casualty & Surety Executives at The Greenbrier earlier this month.

On the first Sunday in October, these CEOs and their spouses gather annually at The Greenbrier for four days of sporting, social and intellectual activity.

Now numbering in excess of 1,200, they take over the elegant Greenbrier resort nestled in the hills of West Virginia. They dive into sporting events (golf, tennis, trapshooting, horseback riding,

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Groups mobilize to use new Risk Retention Act

By JERRY GEISEL

WASHINGTON—Expansion of the federal Risk Retention Act, coupled with changes in tax law and the tight market, will lead to a surge in growth of domestically chartered group-owned captive insurance companies, experts predict.

Already groups are beginning to mobilize to take advantage of the expanded Risk Retention Act, given final approval by Congress this month and sent to President Reagan for his signature.

The act establishes a new, exciting environment in the United States in which group-owned captives are likely to thrive, observers say.

For the first time, special multiple-owner captives—called risk retention groups—will able to operate nationwide to provide all casualty coverages except workers compensation to member-owners.

In addition, the legislation pre-empts state laws that prohibit employers from purchasing casualty insurance on a group basis.

The legislation wipes out the obstacles that have stood so long in the way of trade groups that have wanted to set up captives in the United States.

Effective upon presidential signature, a risk retention group that is chartered in one state will be free to operate nationwide without having to obtain prior rate and policy form approval from every state in which it does business.

In addition, captives that are chartered as risk retention groups no longer will have to be licensed as admitted insurers to operate in other states or use licensed, commercial insurers as a front to avoid run-ins with state regulators.

"You can go nationwide quickly under one set of rules," observed Ron Boggs, a risk management consultant with The Wyatt Co. in Chicago.

Until now, this freedom from state regulatory obstacles has existed under the original 1981 Risk Retention Act only for risk retention groups chartered to provide product liability and completed operations coverage.

But the broadening of the 1981 law opens pooling arrangements to a much wider range of professional groups with severe liability problems.

"Hospitals, truckers, bus operators, municipalities now will have the risk retention group option," noted

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Insurers to pay $30 million in M&M-Manville settlement

By STEPHEN TARNOFF and STACY SHAPIRO

DENVER—Marsh & McLennan Inc.'s agreement to pay $29.75 million plus interest to Manville Corp. to settle a major broker malpractice lawsuit is fully insured, the broker says.

Although M&M declined to give details on its insurance coverage, sources said numerous foreign and domestic insurers will respond under a 1981 claims-made errors and omissions policy.

The settlement, which will grow in value before it is paid, is the second-largest brokers' E&O settlement reached this year. In July, broker Bayly, Martin & Fay agreed to pay Occidental Petroleum Corp. $32 million to settle a lawsuit alleging BMF placed insurance for Occidental with an allegedly non-existent insurer (*BI*, July 14).

Manville Corp., formerly Johns-Manville Corp., filed its suit against New York-based M&M, the world's largest insurance broker, in state court in San Francisco in 1981. The manufacturer alleged that the broker failed to arrange adequate insurance coverage for asbestos-related claims.

In a prepared statement, M&M denied liability and said it negotiated the settlement because of the "prolonged and costly litigation." One source said the negotiations lasted for at least a year.

On the same day the Manville and M&M settlement was reached, Oct. 10, Manville also announced that it had settled coverage litigation with five insurers for more than $45 million.

M&M had E&O coverage in 1981 that was substantially in excess of the $29.75 million amount of the settlement, according to insurance sources.

M&M had a $1.6 million deductible for each and every loss up to a $6 million aggregate under the excess E&O liability policy, a source said. However, that deductible already has been exhausted, sources said.

M&M's coverage was written in layers with a $5 million layer excess of $1.6 million, $20 million excess of $6.6 million and $10 million excess of $26.6 million.

The many insurers on the M&M risk include underwriters at Lloyd's of London, various London companies including H.S. Weavers (Underwriting) Agencies Ltd., former Lloyd's underwriter Ian Posgate, and many U.S. companies, sources said. London insurers expect to pay just more than half of the settlement, although as of last week they had not been notified of a claim, sources added.

London brokers say they fear the settlement could make renewals of brokers E&O coverage next year

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update

FAA held liable in crash

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into Boston Harbor on Jan. 23, 1982. Two passengers were missing and presumed drowned and 132 others filed personal injury claims, said James F. Meehan, a lawyer with the Boston firm of Meehan, Boyle & Cohen, representing World Airways (*BI*, Feb. 1, 1982).

A group of insurers led by Associated Aviation Underwriters of New York later paid the Oakland, Calif.-based airline $45 million under an agreed-value policy for loss of the aircraft, and covered $4.5 million in personal injury awards and settlements, he said.

World Airways sued the FAA and the Massachusetts Port Authority, which managed the airport. In a complex proceeding in U.S. District Court in Boston, a jury was to decide MassPort's degree of liability, while Judge Robert E. Keeton was to determine the FAA's degree of liability under the Federal Tort Claims Act.

The jury was deadlocked over MassPort's liability. But, Judge Keeton last April found World Airways 50% liable, MassPort 30% liable and the FAA 20% liable, though his ruling was binding only on the FAA.

Because of the hung jury, though, the FAA—under joint and several liability—had to pay all the remaining 50% of damages.

Total damages of $25.6 million—including $24 million for the market value of the DC-10 at the time of the crash—were reduced to $23.7 million to account for salvaged DC-10 parts, Mr. Meehan said. He added that these damages do not include personal injury claims and that any recoveries will be paid to the insurers.

A new jury trial will be held to determine MassPort's liability and the amount of damages sustained in the accident, according to Mr. Meehan, who said that no trial date has been set.

Meanwhile, the judgment against the FAA has not been entered. A hearing has been set for Nov. 7 at which the FAA is expected to ask that the judgment not be entered until after the MassPort trial.

DC-10 award overturned

CHICAGO—McDonnell-Douglas Corp. does not have to pay $3 million in damages to the widow of the pilot of the American Airlines DC-10 that crashed near Chicago in May 1979 in the worst aviation disaster in U.S. history, a federal appeals court says.

The 7th U.S. Circuit Court of Appeals overturned the award and ordered a new trial because the jury should have been informed the award would not be subject to federal income tax. It also ruled the jury should have been permitted to hear evidence that the pilot might not have started another career after his retirement.

In February 1984, a federal court jury awarded $4 million to Lora Lux, the widow of pilot Walter Lux, and $150,000 to their son Michael (*BI*, March 5, 1984). McDonnell-Douglas paid the $150,000 in early 1985. The $4 million award was reduced to $3 million.

McDonnell-Douglas Corp., the sole defendant, built the jet. The family could not sue the airline under work comp laws.

At the time of the crash, McDonnell-Douglas had $450 million in product liability insurance, about 80% of that placed in the London market.

BIC must pay $3.25 million

PHILADELPHIA—The BIC Corp., based in Milford, Conn., will pay $3.25 million to a Philadelphia woman severely injured in a fire allegedly caused by a BIC lighter as part of a settlement agreement, said the victim's attorney.

Attorney Mel D. Kordas said the woman, Cynthia Littlejohn, now 34, was burned over 25% to 30% of her body three years ago after she placed a BIC lighter in the breast pocket of her down coat.

Mr. Kordas said the company has insurance coverage, but would reveal no further details, citing the settlement agreement. A BIC spokesman could not be reached for comment.

Searle suit going to trial

WASHINGTON—A product liability lawsuit over a G.D. Searle & Co. contraceptive will proceed in a New Jersey federal court following the Supreme Court's refusal to hear Searle's appeal seeking dismissal of the suit.

Susan Cohn of New Jersey claims in a lawsuit filed against Searle in 1974 that the contraceptive Enovid caused her stroke in 1963.

A U.S. district judge dismissed the suit in 1984, ruling that under New Jersey law, the suit should have been filed within two years after the discovery of a connection between the injury and its alleged cause. Mrs. Cohn and her husband were found to have become aware of a possible connection in 1970.

However, the 3rd U.S. Circuit Court of Appeals overturned the District Court's decision, ruling that the two-year statute of limitations did not apply at the time Mrs. Cohn filed suit.

Searle appealed this ruling to the Supreme Court, which last week refused to hear the case. The suit now goes to trial.

Briefly noted

James E. Dwane, 46, senior vp of **Prudential Reinsurance Co.**, is slated to succeed president George S. Nimmo, who is retiring effective Nov. 21. Mr. Nimmo, 63, said his company's improved results and strong depth of management were factors in his decision to retire. . .The **Omaha Indemnity Co.** has entered arbitration proceedings with former managing general agent **Royal American Managers Inc.** at RAM's request (*BI*, April 28).

errors & omissions

Huggins Financial Services Inc. was incorrectly referred to as Higgins & Co. Inc. in a chart in the Perspective section of the Sept. 22 issue of *Business Insurance*. In addition, Huggins Financial Services has six members of the Casualty Actuarial Society on its staff. *BI* regrets the errors.

Child-care centers sue insurers over coverage

By STEPHEN TARNOFF

DENVER—Two Colorado child-care centers are suing 16 insurers in a class action alleging that they wrongfully canceled coverage, failed to renew it and raised premiums by exorbitant amounts.

The suit, filed in state court on behalf of 726 licensed child-care centers, also contends the insurers acted in bad faith and violated the federal McCarran-Ferguson Act, for which the insurers should lose their exemption from antitrust laws.

The suit seeks unspecified compensatory and punitive damages and also treble damages under antitrust laws.

'The defendants' problems or losses are totally unrelated to child-care centers in Colorado,' the lawsuit says.

However, the insurers vigorously deny allegations in the suit for numerous reasons and accuse the plaintiffs of seeking to circumvent Colorado tort reform legislation.

Before the court's Oct. 2 granting of a plaintiffs' motion to file an amended complaint, insurers filed motions to dismiss the complaint on various grounds and likely will do so again. A class has not been certified.

The suit comes amid charges by some groups that insurers have banded together to withdraw coverage from certain lines or significantly raise rates. A recent investigation by the Federal Trade Commission, however, found there was no evidence of price-fixing or boycotting by insurance companies.

The amended complaint filed by Child Garden Inc. of Conifer and A Child's Adventure Land Inc. of Broomfield contends that Colorado law requires insurers to base rate increases on loss experience within the state and prohibits rates from being excessive, inadequate or unfairly discriminatory.

However, the suit alleges that based on information provided by the Insurance Services Office Inc., insurers in Colorado paid few day-care center losses from 1980-1983 and made an underwriting profit.

"The property/casualty insurance industry, including the defendants, sustained no losses on premiums paid during those four years, and to the contrary, made a profit on premiums alone, without investment income," the suit says.

These profits on day-care business included 92% in 1980, 44% in 1981, and 98% in 1982, the suit says, and that information was available to insurers.

The suit also notes that a fall 1985 study by the Colorado Child Care Coalition reported that 157 child-care centers paid premiums of $400,000 for coverage in 1984 while claims paid on behalf of the centers from 1974 through 1984 totaled only $55,000.

However, the suit says that in an effort to promote tort reform in the 1986 legislative session, insurers in the summer of 1985 began a campaign against licensed child-care centers and others that included:

- Canceling commercial property and casualty insurance coverage midterm or refusing to renew coverage, often without advance notice.
- Offering to provide coverage for exorbitant increases in premiums ranging from 100% to 1,000%.

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Lloyd's CEO's power grows

By STACY SHAPIRO

LONDON—Seeking to prevent further scandals, Lloyd's of London is giving its chief executive new powers to investigate complaints about the competence or honesty of Lloyd's brokers and underwriting agencies.

From now on, as soon as the chief executive becomes aware of complaints about a broker or underwriting agency, he will be able to call for a spot check of the company without prior notice, dig through the company's documents and ask questions of the company's staff.

And, the chief executive will have a 15-member department to help conduct the investigation.

Chief Executive Alan Lord hopes this new watchdog group in Lloyd's will be able to prevent further scandals in the market, which have cost members millions of dollars.

"If we had reviewed the affairs of brokers and underwriters, we might have seen something that would have prevented" the alleged misappropriation of funds from syndicates managed by PCW Underwriting Agencies Ltd., Mr. Lord told a news conference.

Mr. Lord was given the stronger powers last week when Lloyd's Council passed the Review Powers Bylaw, empowering the deputy chairman and chief executive of Lloyd's to order a review of a broker or underwriting agent "without prior notice."

Under the bylaw, the chief executive or his designate may require any Lloyd's broker, underwriting agent or director of such company to answer questions, furnish information, and produce documents. The bylaw also allows the chief executive or designate to visit the company's premises.

Anyone who cannot provide the information or documents that Lloyd's is seeking must explain why the material is not available.

Spot checks may arise because information has come to the attention of Lloyd's chief executive that "circumstances weren't as they should be," Mr. Lord said.

While false rumors occasionally may prompt an investigation, Mr. Lord said he does not expect this to happen very often.

Also, in most instances, Mr. Lord said that cases will be reviewed with prior agreement with the brokers and underwriting agencies. "We have no intention of a 3 a.m. knock on the door," he said.

To help Mr. Lord, Lloyd's Council set up the General Review Department to monitor compliance with Lloyd's regulations by underwriters, agents and brokers.

The new department will be responsible for periodic reviews of brokers and underwriters "to confirm that adequate systems and procedures are operating to ensure compliance with Lloyd's bylaws and regula-

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inside

- Now that Congress has sent an expanded Risk Retention Act to the president, this week's editorial suggests Congress and states turn their attention to tort reform legislation. **PAGE 8**
- James W. Noyes, past president of the National Assn. of Casualty & Surety Executives, offers a game plan for effective management. **PAGE 70**
- In RMIS Commentary, David A. Tweedy observes that RMIS vendors are hesitant to produce software for claims-made applications. **PAGE 67**
- In Ask a Risk Manager, Ralph F. Perry Jr. stresses the need to prepare management for the future in addition to the importance of a personal visit to your London underwriter. **PAGE 68**
- The small Channel Island of Guernsey is hailed as "the gateway to Europe for overseas markets," during a captive insurance company conference. **PAGE 106**
- With London cutting back the reinsurance it writes, U.S. political risk markets are disappearing. But buyers can buy coverage directly in London. **PAGE 112**

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Trick or treat?

Financial guarantee future uncertain

By JUDY GREENWALD

NEW YORK—The financial guarantee industry is in a state of turmoil.

Insurers and investors are reeling from the impact of the proposed tax law as well as tightened capacity in the primary and reinsurance property/casualty market, observers say.

And regulatory developments are pressuring the market as well (see story, page 22).

The situation is in marked contrast to only 15 months ago, when observers described the demand for financial guarantee insurance as phenomenal (*BI*, May 27, 1985).

But despite the turmoil, the industry remains vital, with new monoline primary and reinsurance companies devoted exclusively to financial guarantee insurance being formed.

Market indicators

This special report, continuing through page 24, includes updates on the trend toward monoline financial guarantee insurers, underwriting losses, products, pending regulations and rating services.

The financial guarantee market can be divided into two sometimes overlapping segments: credit enhancement and "regular" financial guarantee insurance.

Under credit enhancement coverage, the insurer assigns an investment grade municipal or corporate issue the insurer's own Triple-A rating.

Regular financial guarantee insurance is more likely to be written by one of the traditional multiline property/casualty companies.

This type of insurance includes limited partnerships insurance, lease insurance, residual value insurance and good-weather insurance.

The impending tax bill has had the greatest impact on insurance for limited partnerships and municipal bonds, according to observers.

To the extent the new tax bill limits the effectiveness of limited partnerships, municipal bonds and other transactions used as tax shelters and covered by financial guarantee insurance, "you pull a tremendous amount of need for the product away," explained John Foley, vp and national director of Alexander & Alexander Inc.'s financial products group.

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Specialty risks find capacity in tight market

Alternative market facilities are moving in to fill the void created by the lack of commercial insurance capacity for several specialty risks.

Nowhere is this more apparent than in the directors and officers liability insurance market, in which alternative facilities are expanding the limits of available coverage (see story, page 26).

Agents and brokers are beginning to develop alternative markets to provide professional liability insurance, though smaller agents generally can find conventional coverage (see story, page 29).

Lawyers also are forming captives to cover their malpractice risks (see story, page 36).

Accountants, hit hard by the capacity crunch, may find the market opening up (see story, page 42).

And, environmental impairment liability insurance may be more available in 1987, from commercial insurers and captives (see story, page 49).

Market turmoil

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Two parts of the tax bill would affect issuance of, and thus insurance for, municipal bonds, observers say. The provisions would:

- End tax exemptions for industrial-development bonds issued for sports facilities, convention and trade-show facilities and industrial parks, among other facilities.
- Set a per-state cap on the tax exempt volume of proceeds from private activity bonds. A private activity bond generates for a private concern 10% or more of the bond's proceeds.

The cap would be $75 per capita or $250 million per state, whichever is greater, through 1987. The cap would drop to $50 per capita or $150 million per state, whichever is greater, in 1988.

Bonds subject to the cap include those for single-family or multifamily housing, mass transportation and hazardous-waste facilities, and industrial development bonds of less than $10 million.

Present law already calls for sunset provisions for small-issue IDBs for commercial uses Dec. 31.

The sunset provision for small-issue IDBs for manufacturing facilities would be extended one year to Dec. 31, 1989; sunsets for single-family housing bonds would be extended one year to Dec. 31, 1988.

A total of $33.73 billion of bonds that may now be placed under state caps were sold nationwide in 1984, said Dennis Holt, manager of special projects for the Public Securities Assn. Only $20.96 billion could be issued under the $75 per capita cap, and only $13.57 billion under the $50 cap.

Mr. Holt noted the PSA used 1984 as the base year for its study because issuers rushed to market in 1985 out of fear of the tax bill.

Municipal bond insurers enjoyed a big growth spurt last year as issuers rushed to the market in anticipation of the impending tax bill (see story, page 17).

"There's no question one of the immediate impacts of the tax bill will be a substantial reduction in tax-exempts in '87 and for a while after," said Robert A. Meyer, BIGI's president.

But insurers say they do not expect the tax bill to have a severe long-term negative impact.

Gerald L. Friedman, president and chief executive officer of FGIC, said municipal bond insurers have concentrated on public purpose bonds, which have not been "dramatically affected" by tax reform.

"The bulk of our turf is untouched," agreed Leon J. Karvelis Jr., executive vp and director of underwriting and research at MBIA.

And, there are programs heavily reliant on financial guarantee insurance that will not fare badly under the proposed legislation, including non-profit hospitals and solid waste issues, noted Michael E. Satz, AMBAC's senior vp and chief operating officer.

Despite the constraints imposed by the new tax bill, insurers also observed that municipalities still will have to go to the market to raise funds, creating a market for financial guarantee insurance. "They still need to have financing for their infrastructure, including roads and sewer systems," Mr. Meyer noted.

And the insurers also note they are ready to insure taxable bonds. "We're prepared to insure taxable obligations of state and local governments," said BIGI's Mr. Meyer.

"In the long run, the financial guarantee business will continue its market penetration," predicted Daniel A. Mushegian, president of FGC Services, and executive vp of Enhance Reinsurance Co., a reinsurance firm now being formed (see story, page 14). "I still think our target's around 40%," although this may not be reached for five to six years, he said.

Financings are growing in complexity, and insurance helps "shorten your story" and sell bonds, he explained. "Once a potential buyer hears it's insured and Triple A—bingo!"

He said this is why he is also unconcerned about tighter spreads in interest rates between different grades of bonds.

Observers pointed out that when spreads are tight, the cost of municipal bond insurance, when added to the cost of a Single-A-rated-debt, for instance, could make it at least as expensive as a Triple-A rated bond for the issuer, thus diminishing its appeal.

Insurers said low interest rates this year are one reason the percentage of insured bonds fell to about 19% of total volume in 1986.

But Mr. Mushegian attributed the tightening spreads to "Congress' shenanigans." He predicted "the market will reorder itself" in five to six months.

Others are less optimistic.

Jeffrey B. Noss, vp and head of municipal research at Roosevelt & Cross Inc. in New York, predicted that the percentage of insured bonds will decline to 15% to 20% of the total par value.

"The days of bond insurance representing 25% of the new issues marketplace are pretty much over," agreed Steven Schrager, senior vp and head of municipal research at L.F. Rothschild, Uterberg Towbin.

He said the tax legislation encourages a move to general obligation bonds, which are less likely to be insured, because bond buyers can easily grasp the bond's intent.

Mr. Noss also noted that the underwriters of general obligation bonds are more likely to be selected on the basis of competitive bids, rather than through negotiation, and underwriters competing are less likely to insure bonds.

Insurers also will be hurt by the bill's impact on single and multifamily housing, Mr. Schrager said.

There will "still be enough of the pie to go around," he said, although the net effect of the tax legislation will be a reduction in the overall volume of newly insured bonds, and the industry will not see another year like 1985.

Limited partnerships, in which investors' funds are pooled to buy assets, often real estate, also have been a market for financial guarantee insurance which is threatened by the tax bill.

In the past, the partners made a modest cash down payment and issued a promissory note payable in annual installments to finance the balance. Insurance guaranteed payment.

The primary appeal of many of these syndicates was that investors were able to use them as tax writeoffs, by taking their pro-rata share of the partnership's tax deductions for property depreciation and other fees incurred.

Mary Laughlin, senior vp at Alexander & Alexander Texas in Dallas, said the tax bill hurts a limited partnership's effectiveness as a tax shelter by distinguishing between earned income and "passive," or investment, income.

Ultimately, under the tax bill, an investor will be unable to deduct "passive" losses, or losses on unearned income, on an investment against earned income; an investor can deduct those losses only against passive income.

Once the tax bill's transition rules are finalized, investors and syndicates will know how to structure a transaction, Ms. Laughlin said. But until then, there has been a "tremendous slowdown" in the sale of real estate securities.

"I don't see a lot of relief short-

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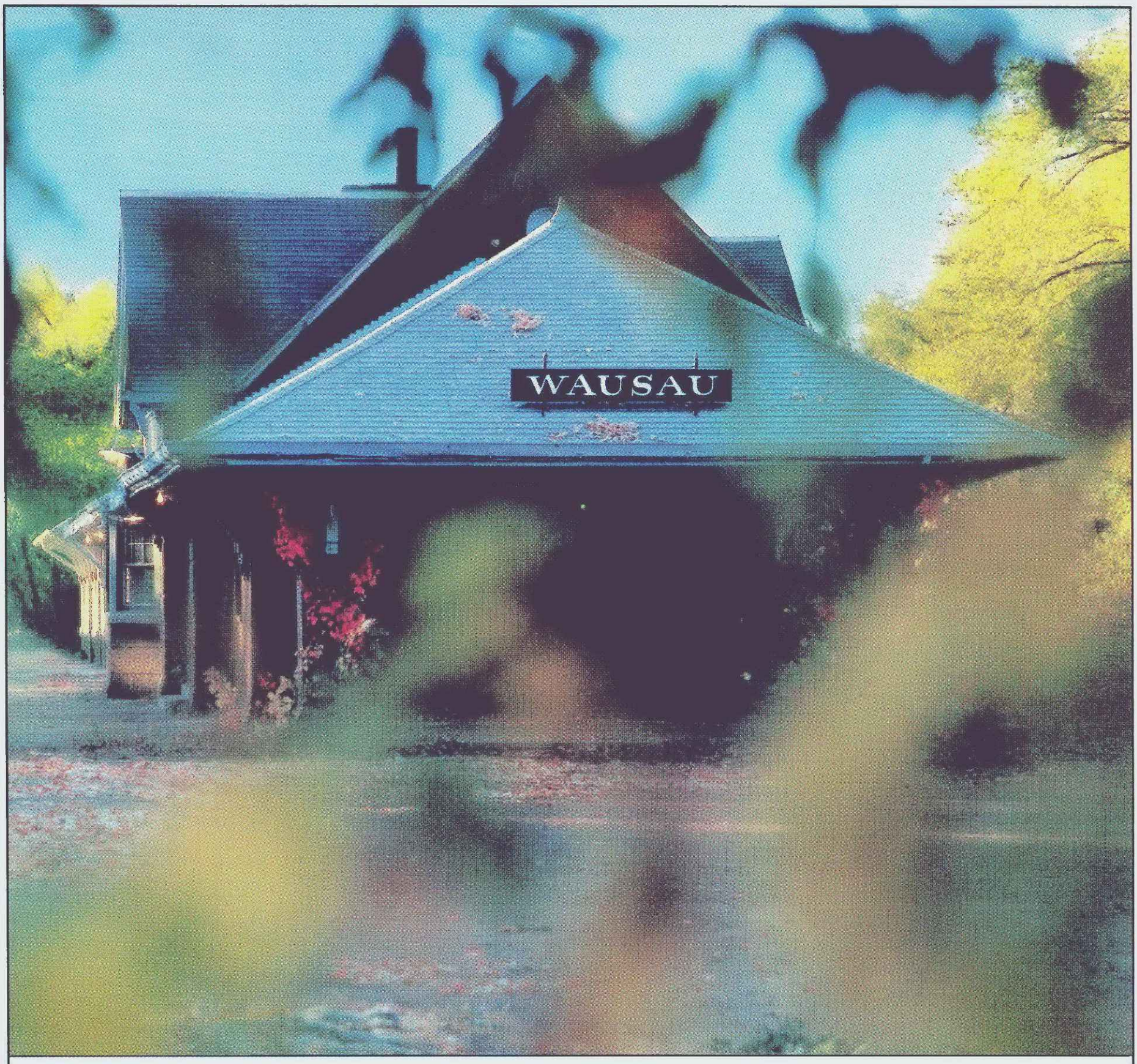

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Market turmoil

Continued from page 4

term in the investor bond area," agreed Cary Fondren, senior vp at Corroon & Black Inc. in Seattle.

Margaret Connor, a vp at Johnson & Higgins, said she has not seen a proposed limited partnership transaction in six months, while two or three years ago, she saw transactions "all the time."

Phil Lian, vp and manager of financial guarantee activity at C&B's New York, office said limited partnerships accounted for more than $120 million in premiums in 1985. This year, he said, it is probably one-third that amount.

"The major reason for that is tax reform," he said.

"The transactions that are being brought onto the marketplace are more economic and venture capital-oriented rather than tax-oriented," said Mr. Lian.

There is still a market for cash-flow deals that do not rely on tax benefits, though, said Michael Ferrante, vp of Continental Guaranty & Credit Corp., a Continental Insurance Co. unit.

While the market is now "much smaller," it will continue to exist in "new, probably better, form" he said.

But Joseph C. Eanes Jr., president of Fidelity & Deposit Insurance Co. in Baltimore, said the tax bill could cause the collapse of the entire financial guarantee market.

Conceivably, syndicate organizers could start demanding that investors make their entire payments up front, rather than in installments, eliminating the need for bonds, he noted.

Fidelity had generated "several million" dollars in premiums a year ago by issuing limited partnership bonds for deals of $5 million to $10 million, all of which were economically, rather than tax-shelter, driven.

Were the market to collapse, he said, it would not have a material effect on the company overall.

Of the more than $1 billion in financial guarantee premium volume last year, tax-exempt financial guarantees accounted for 75%; limited partnership deals, 10%; corporate obligations such as leases and commercial paper, 10%; and miscellaneous types of coverage, 5%, according to Ken Selzer, manager-financial products, for Employers Reinsurance Corp.

Most credit enhancement insurance is sold by four major monoline insurers that specialize in tax-exempt municipal bond insurance: Financial Guaranty Insurance Co., AMBAC Indemnity Corp., the Municipal Bond Insurance Assn. and Bond Investors Guaranty Insurance Co.

They were largely responsible for insuring $47 billion of the $204 billion in long-term municipal debt sold last year.

In addition, the Financial Security Assn., another monoline insurer, specializes in enhancing the credit of corporate debt.

The Continental Insurance Co. and American International Group Inc., through National Union Fire Insurance Co. of Pittsburgh, Pa., are among the active regular financial guarantee markets.

While demand for municipal bond insurance may be reduced by the tax law, other types of financial guarantee insurance are the victims of the overall tight capacity in the property/casualty market.

"A tremendous amount of capacity went away from the financial guarantee market in the latest insurance cycle because of the fact that the property/casualty insurance companies that had been involved with it have withdrawn or severely cut their activity," said A&A's Mr. Foley. With limited capacity, insurers "are satisfying the needs of their Main Street business first," he noted.

"It's across the board, it's indiscriminate," said Don Matthews, who heads J&H's financial guarantee group.

As a result of the tighter capacity, there are fewer financial guarantee markets, observers said.

Some insurers who "nibbled at the edges" of the market either decided to stay in a "real way" or withdrew, said John Wicher, senior consultant at Russell Miller Inc. in San Francisco.

"Just about every company was dabbling in it to one extent or another," and many of these have now left, said A&A's Mr. Foley.

For example, CNA Insurance Cos. has "really curtailed" its activity, he said. A CNA spokesman would not comment.

Fireman's Fund "went through a re-evaluation of their financial guarantee business as a result of management changes" and is not writing much such insurance outside its membership in MBIA, said Kenneth H. Pinkston, who heads the Financial Guaranty Division of C&B's Brokerage Services Group.

A Fireman's Fund official could not be reached for comment.

C&B's subsidiary, Municipal Lease Insurance Managers Inc., which had an exclusive underwriting agreement with Fireman's Fund for municipal lease guarantees, has now been "streamlined" into another C&B subsidiary, IDBI Insurance Managers Inc., said Mr. Pinkston.

Also, Industrial Indemnity Co., a Crum & Forster Corp. subsidiary, is not writing any new business in its financial guarantee programs while it reassesses its position, said a spokesman.

Mutual Fire, Marine & Inland Insurance Co. in Philadelphia and Transit Casualty Co. in Los Angeles are among insurers that have left the business due to financial problems.

The reinsurance market also is tight, observers say. For example, General Reinsurance Corp. in Stamford, Conn., which had been a factor, "pretty much closed up shop" for financial guarantee insurance about 18 months ago, said Richard H. Napier, second vp.

Its only involvement now is its stock ownership in FGIC, he said.

"The traditional reinsurance market, including the foreigners, have not taken a very big share in this marketplace, and it's gotten worse" with the property/casualty market tightening, said Doug Morris, president of D.G. Morris Inc., a reinsurance intermediary, and vp of U.S. Capital Services Corp.

In the soft market, one could talk about innovative covers, said Mr. Morris, who is trying to form a reinsurer; now it is easier for reinsurers to do what they know best.

While still a factor in the market, Employers Reinsurance Corp. has "retrenched dramatically," said Michael G. Fitt, chairman and chief financial officer. "That business has been for the most part disastrous, principally because most people didn't know what they were doing."

Among Employer Re's concerns are the impact of tax reform, new regulations, and the "lack of established precedent in handling potential loss situations," Mr. Selzer said. "All of them combined have made us extremely cautious."

The involvement of North American Reinsurance Co./Swiss Reinsurance Co. has been "somewhat reduced" because of the tax bill's impact on municipal bonds and limited partnerships, said Frank Conly, senior vp.

But also, the reinsurer does not plan to take on any new types of financial guarantee insurance "before we see what direction the business is headed," he said.

In the meantime, Mr. Conly said,

Continued on page 12

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opinions

That's fast action

WHAT A TRIUMPH!

Legislation significantly expanding the federal Risk Retention Act is on its way to President Reagan after winning final congressional approval this month.

And, it was only eight months from the time the legislation was introduced until Congress cleared it.

That's fast action.

Passage of the legislation removes many of the outdated state barriers that have blocked businesses, trade groups, professionals and municipalities from banding together to self-fund their liability exposures. As soon as President Reagan signs the bill, risk retention groups will be an available mechanism to provide liability coverage to member-owners on a national basis.

In addition, the legislation preempts state laws that prevent or make it difficult for businesses to buy casualty insurance on a group basis.

Passage of the legislation, which expands a much more limited 1981 federal law, is a tribute to a broad array of business groups including the Risk & Insurance Management Society, the National Assn. of Insurance Brokers and the American College of Nurse Midwives. They lobbied tirelessly for it.

Certainly, credit should be given to the National Assn. of Insurance Commissioners for its statesmanship in negotiating with business groups when the legislation was being drafted.

Input from the NAIC has resulted in legislation that strikes a fair balance between the need to give businesses new risk funding vehicles and the need for these groups to be adequately regulated for solvency.

The legislators who championed this legislation—including Sens. Robert Kasten, R-Wis., and John Danforth, R-Mo., and Reps. Norman Lent, R-N.Y., Ron Wyden, D-Ore., and James Florio, D-N.J.—also deserve credit for seeing it through when other issues also demanded their time.

While we welcome passage of an expanded Risk Retention Act, we recognize it is only a first step toward easing the liability insurance crisis.

The Risk Retention Act deals with only part of that crisis: giving businesses another option for funding losses when commercial insurance becomes unavailable or prohibitively expensive.

But the legislation does not touch a major reason why liability insurance has become so costly and scarce: a legal system that, in its desire to compensate victims, no longer fairly balances the rights of plaintiffs and defendants.

With passage of the Risk Retention Act, it is now up to Congress and state legislatures to pass meaningful tort reforms to provide a sensible legal climate in which both risk retention groups and commercial insurers can operate.

letters

Other providers specialize in mental health care

To the editor: Your series of articles on mental health plans (*BI*, Sept. 29) presented most interesting and revealing statistics. However, it is important that I bring a serious omission to your attention.

On Dec. 12, 1977, *Business Insurance* featured our program in an article entitled: "Broker paves way in mental health prevention." We created the first licensed plan in the United States to provide exclusive mental health benefits.

Our mental health program has remained in the forefront of mental health delivery with major changes over the past 10 years.

Our research in the field, dating from 1970, had proved the importance of mental health as an overlooked, but costly, component in the delivery of the indemnity programs then operating.

Our outpatient benefit programs were designed to be preventive, cost-containment replacements for the out-of-date, inappropriate (and insufficient) benefits that were provided in most indemnity contracts.

In the early years, as we traveled around the country attempting to convince insurers and other business officials of the importance of concept and design, almost without exception, we received affirmative endorsement. No one questioned—even then—our statement that "the majority of health care being sought in physicians' offices was more a need for psychological rather than physiological care."

We were encouraged enough to obtain a Health Care Service Plan License in 1975 and were immediately endorsed by a few, but insufficient number of, major insurers as a replacement for their mental health benefit. They had no hard data to give us an appropriate cost offset.

In 1982, with our own data in hand and the assistance of psychiatrists, psychologists and social workers, we licensed a new program: The California Wellness Plan.

We broadened our original concept by adding an employee assistance program and bringing licensed clinical social workers and many more M.D.s into our program.

We initiated research and provided benefits for psychiatric hospitalization, alternative delivery systems and preventive outpatient therapy—precedents that your reporter, Joanne Wojcik, referred to with detail and accuracy.

So far as we know, we were the originators of managed mental health benefit programs. Therefore, I was truly concerned that *Business Insurance* neglected to check its own records for at least some of the above history.

I was even more concerned that our customers and providers—many of whom also rely on *BI* because of our declaration of your comprehensive reporting—might also question the omission of the Wellness Plan from the extensive and otherwise well-written report.

John E. Armer
President
California Wellness Plan
Santa Monica, Calif.

●●●

To the editor: Your article, "Firms seek psychiatric cost control" (*BI*, Sept. 29), failed to mention the group that has perhaps the longest history of efforts in the mental health and substance abuse arena: MCC Companies Inc.

MCC Companies, a Minneapolis firm, has through its operating subsidiaries, Metropolitan Clinics of Counseling, provided full risk capitated mental health and substance abuse services for the last 12 years to an enrollment base of more than 600,000 covered lives. With aggressive management, a full range of mental health and substance abuse benefits can be made available to any covered group for approximately 4%-5% of total premium.

John R. Cox
Vp-development
MCC Companies Inc.
Minneapolis

■ *Editor's note: The Sept. 29 report focused on preferred provider organizations organized exclusively for mental health treatment. The California Wellness Plan and MCC Companies are licensed as health maintenance organizations.*

Business Insurance welcomes letters from its readers. Please keep your comments as brief as possible. We reserve the right to edit letters for clarity or space. We will not publish unsigned letters. Send your comments to Letters to the Editor, Business Insurance, 740 N. Rush St., Chicago, Ill., 60611.

Tort reform won't kill risk management

To the editor: In "Tort Reform May Hurt Surplus Insurers: Buyer" (*BI*, Sept. 22), P. Richard Hackenburg is quoted as stating that meaningful tort reform could put surplus lines insurers out of business and diminish the need for risk management. I believe these comments are inaccurate and truly misrepresent the potential effects of tort reform.

Tort reform is essentially a cost-control measure. In the aftermath of tort reform, there will continue to be accidents, injuries, lawsuits and settlements. Exposures will still exist, with new concerns arising all the time. Liability will continue to be assessed for tortious conduct. The only change will be that the value of some claims will be reduced by adopting caps on non-economic damages, collateral sources and possibly contributory negligence. Intelligent risk management will continue to be an important element in overall business management.

Further, tort reform does not signal an end to the surplus lines insurance market. Anyone seeking to buy high limits or coverage for complex risks can appreciate the need for surplus lines insurers. Tort reform does not alter the nature of the risk being underwritten, except to possibly reduce the ultimate net loss. The nature of the risk and predictability of losses remain unaffected.

I do not foresee admitted insurers tripping over each other in a rush to cover risks that presently can only find insurance in the surplus lines market.

While tort reform is important to business and the public sector, we should be careful not to overestimate its potential impact on the insurance industry or the need for risk management.

Robert J. Eck
Manager of Risk Management
Bally Manufacturing Corp.
Chicago

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CIGNA

Market turmoil

Continued from page 6

"We've got enough on our plate at this point."

Robert Ungerleider, president of the Financial Risk Underwriting Agency in New York, said the reinsurance market is looking up somewhat, however.

"It seems to be loosening up a lot in a lot of areas, but it's a relative experience, as you know," he said. "Last year, it was impossible to get reinsurance. This year, it's just difficult."

Despite the tight capacity in the primary and reinsurance markets, new monoline companies are being formed, including Enhance Re; USF&G Financial Security Corp., which had operated as a USF&G subsidiary, and the reinsurance company being formed by Mr. Morris (see story, page 14).

In addition, Financial Insurance Risk Management, which writes financial guarantee business on behalf of parent company Government Employees Insurance Co. of Washington, D.C., will be a "major factor in the future," A&A's Mr. Foley predicted.

Dennis Layne, FIRM's president, has "got some tremendous capacity" available, according to Mr. Foley.

Mr. Layne said FIRM has been in business about two-and-a-half years, a little more than a year of that as a GEICO subsidiary. It underwrites pools of credits as well as some residual value insurance, and generates about $3 million in premiums annually.

Other major insurers are creating subsidiaries devoted to financial guarantee insurance. For instance, Continental Insurance Co., which continues to be a major factor in the market, formed Continental Guaranty & Credit Corp. several months ago (*BI*, May 26).

And, backed with $100 million in capital from parent company Prudential Insurance Co. of America, Dryden Guarantee Insurance Co. was created earlier this year (*BI*, March 3).

Tight capacity also has had an adverse impact on the introduction of new products, Mr. Matthews of Johnson & Higgins said. While there are variations on the existing ones, there are no dramatic new ones," he said.

But, Mr. Matthews added that "as the traditional markets increase capacity in their normal markets and as things settle down," new products could be developed. However, he said, new product development also depends upon the nation's economic activity.

"I think it could be a good two, three years" before the property/casualty industry revives its interest in financial guarantee insurance, predicted John F. Gross, managing director of Marsh & McLennan Inc. in New York.

The tight financial guarantee market also has caused some brokers to devotes fewer resources to the business than they did a year ago.

For example, A&A now has three people working full time on financial guarantee insurance, down from six a year ago. There are so few markets these days, and the underwriters are so specific about what they will write it takes only 15 to 20 minutes to determine whether a deal can be made, Mr. Foley noted.

And a year ago, Johnson & Higgins had about 25 people working at least part-time on financial guarantee insurance. Today, the "same people are still involved and available," but not on a full-time basis, Mr. Matthews said.

Similarly, M&M's Mr. Gross said the brokerage still has 50-60 people who get involved with financial guarantee business, but they are spending less time on this segment of the business. "There's no use beating your head when no one's willing to help in any way," he said. ■

Financial guarantee ratings

Financial guarantee insurers can't take their Triple-A ratings for granted.

Both Standard & Poor's Corp. and Moody's Investor Service Inc., which rate financial guarantee insurers, monitor the insurers during the year and will downgrade them (see story, page 24).

For instance, both United States Fidelity & Guaranty Co. and the Crum & Forster inter-company pool, which includes Industrial Indemnity Co., have been downgraded by S&P from a Triple-A to a Double-A.

USF&G's financial guarantee subsidiary, USF&G Financial Security Co., is not very active in writing financial guarantee business at present. A source connected with the company noted it now is spinning off from USF&G as a monoline company, a move being considered before the downgrade.

Its president, Michael Djordjevich, had no comment, citing provisions of the Scott-Rodino Act that prohibit releasing information.

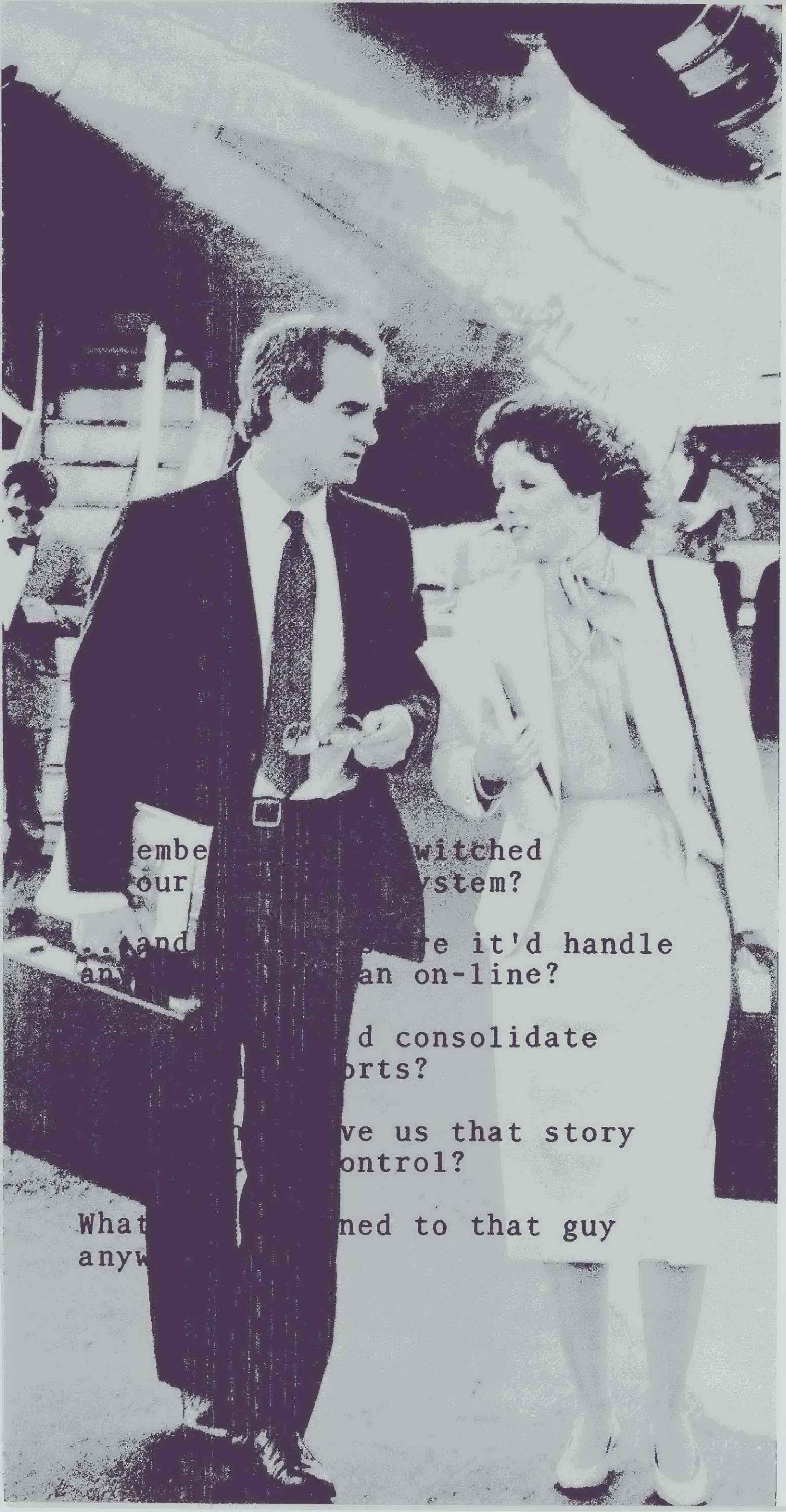
Industrial Indemnity stopped writing financial guarantee business last September. A C&F spokesman said that was unrelated to the downgrade.

Robert Mebus, S&P managing director, called multiline firms a "little more highly leveraged" than monoline because of their diverse business.

He says companies rated Triple-A by S&P include AMBAC Indemnity Corp., MBIA, Bond Investors Guaranty, Financial Guaranty Insurance Co., FSA, Aetna Casualty & Surety, Travelers Indemnity Co., Fireman's Fund Insurance Co., Continental Corp., American International Group, Allstate Insurance Co., Chubb Group, CNA Insurance Cos., European General Reinsurance Co. (Switzerland), General Reinsurance Corp., Government Employees Insurance Co., Hanover Re, Hansa International Insurance Co. (Sweden), Hartford Insurance Co., Mercantile & General Reinsurance Co. (Great Britain), Motors Insurance Corp., North American Reinsurance Co. (USA), Progressive Casualty Insurance Co., Royal Indemnity Co., SAFECO Insurance Co., Skandia America Reinsurance Co., Skandia International Insurance Co., St. Paul Fire & Marine Insurance Co., Sun Alliance and London P.L.C., Swiss Reinsurance Co., Winterthur Swiss Insurance Co. and Zurich Insurance Co. (Switzerland).

Moody's has given its top Triple-A rating to the claims-paying ability of MBIA, FGIC and BIG.

It has given a Triple-A rating for the senior debt of Metropolitan Life Insurance Co., Northwestern Mutual Life, Travelers, Aetna, and National Union Fire Insurance Co. of Pittsburgh, Pa., an AIG company. Moody's rating for claims-paying would not be lower than for senior debt rating.



There seem to be an awful lot of benefit administration and reporting systems out there that have a sort of backwards way of looking at things. Fact is, when you have to make a benefit plan change of one kind or another, you have to go out of your way to "accommodate" the system.

Shouldn't it really be the other way around? Shouldn't a benefit system be flexible and responsive to your needs? Shouldn't you be able to go about your work without worrying about playing mind games with a hunk of software? Hmmmm? We think so, too. (We being John Hancock.) That's why we developed the first managed health care claim system that offers one thing no mere upgrade can. Foresight.

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Monoline insurers gaining market share

By JUDY GREENWALD

More monoline companies are forming to write only financial guarantee insurance, which is expected to bolster their already dominant share of this market.

The long-tail segment of the financial guarantee business in particular, which includes municipal bonds, "is going to be relegated to monoline business," predicts John Wicher, a senior consultant at Russell Miller Inc., who was formerly an official at Crum & Forster's Industrial Indemnity Financial Corp.

The trend toward segregating long-tail financial guarantee business is analogous to that which led to distinct mortgage insurers in the 1930s, Mr. Wicher said.

Joanne S. Morrissey, a principal with Firemark, an insurance research and investment banking firm in Morristown, N.J., said she has a "gut feeling" that "we will end up with a monoline industry."

"When it gets right down to it, financial guarantee is not the same thing as other types of insurance," said Ms. Morrissey, who has studied the industry. An economic downturn could trigger defaults, and therefore capital and surplus must be kept separate from other lines of insurance.

"It's just something that has the potential to be too dangerous," she said. "There has to be a separation of the accounting," she added, reflecting the opinion of some regulators (see story, page 22).

But Mary O'Gorman, a vp with American Re-Insurance Co. in New York, says, "I think there will still be multiline property/casualty companies who do this business—certainly there will be ones who want to do this business.

"It makes sense from a business standpoint," Ms. O'Gorman added.

Monolines that lead the financial guarantee market now, particularly in the tax-exempt area, include:

- AMBAC Indemnity Corp., whose investors are Xerox Corp., Citibank N.A., Stephens Inc. and AMBAC management. The company reported gross premiums written of $172.4 million in the 12 months ended June 30, 1986, compared with $134.6 million for a comparable 1984-85 period. Net premiums written for the period ended June 30, 1986, were 134.1 million.
- Financial Guaranty Insurance Co., which is owned by General Electric Credit Corp., General Reinsurance Corp., J.P. Morgan & Co., the Kemper Group, Merrill Lynch and Shearson Lehman Brothers Inc. The company, which began insuring municipal bonds in January 1984, reported $168.4 million in net premium volume in 1985, compared with $45.2 million in 1984.
- Bond Investors Guaranty Insurance, which is owned by American International Group, Salomon Brothers Inc., Bankers Trust New York Corp., Xerox Credit Corp. and Government Employees Insurance Co. The company reported $60.9 million in net premium volume in 1985, its first full year of operations.

The company started writing business in April 1985, according to Mark H.S. Cohen, vp-finance and administration. For the first nine months of 1986, the company had net premiums written of about $20 million, Mr. Cohen said.

- The largest of the monolines, Municipal Bond Insurance Assn. posted $167.9 million in net premiums written for the year ended Nov. 30, 1985, compared with $141.3 million for a comparable 1983-84 period.

However, MBIA technically is not a monoline insurer because it is owned by an association of multiline insurers. These are: Aetna Casualty & Surety Co., which controls 33% of the company; Fireman's Fund Insurance Co., which controls 30%; The Travelers Indemnity Co., 15%; Aetna Insurance Co., a CIGNA company, 12%; and the Continental Insurance Co., 10%.

As members of an association, each insurer owns a percentage of the facility and the corresponding percentage of the policies issued by MBIA, but each insurer's liability is limited to the percentage of the policy it insures.

MBIA recently was fined $25,000 by the New York Insurance Department for misrepresenting its assets in advertisements (*BI*, Sept. 8).

MBIA is considering whether to change its structure, said Robert R. Godfrey, executive vp and director of corporate development.

- Financial Security Assurance, which was formed in July 1985 with $188 million in capital.

The company, which specializes in insuring corporate issues, has 26 corporate investors, including the Equitable Life Assurance Society of the United States, John Hancock Mutual Life Insurance Co. and the New England Mutual Life Insurance Co.

Other insurers are interested in becoming monoline companies. Now in the process of being formed is Enhance Reinsurance Co., a subsidiary of Enhance Financial Services Inc., which plans to specialize in reinsuring financial guarantee insurance. It anticipates posting $52.3 million in net premiums written this year.

Allan R. Tessler, a senior partner in New York law firm Seah & Gould, is chairman of Enhance Financial Services. Wallace O. Sellers, formerly Merrill Lynch's director of diversification and joint ventures, is president and chief executive officer of Enhance and chairman and chief executive officer of its reinsurance subsidiary.

Doug Morris, president of reinsurance intermediary D.G. Morris Inc. and vp of U.S. Capital Services Corp., said he is in the process of raising $120 million in capital to form another monoline reinsurer.

At least $100 million is needed to obtain a Triple-A rating, he said. "You can't just start small."

In addition, USF&G Security Co. in San Francisco, which originally was a subsidiary of United States Fidelity & Guaranty specializing in financial guarantee insurance, is now in the process of becoming a monoline company. Its president, Michael Djordjevich, would not comment, citing provisions of the Scott-Rodino Act. However, the company reportedly decided to become monoline because of regulatory and competitive pressures.

One subsidiary that has no plans to become monoline is Continental Guaranty & Credit Corp., an underwriting management company created by Continental Insurance Co. ■

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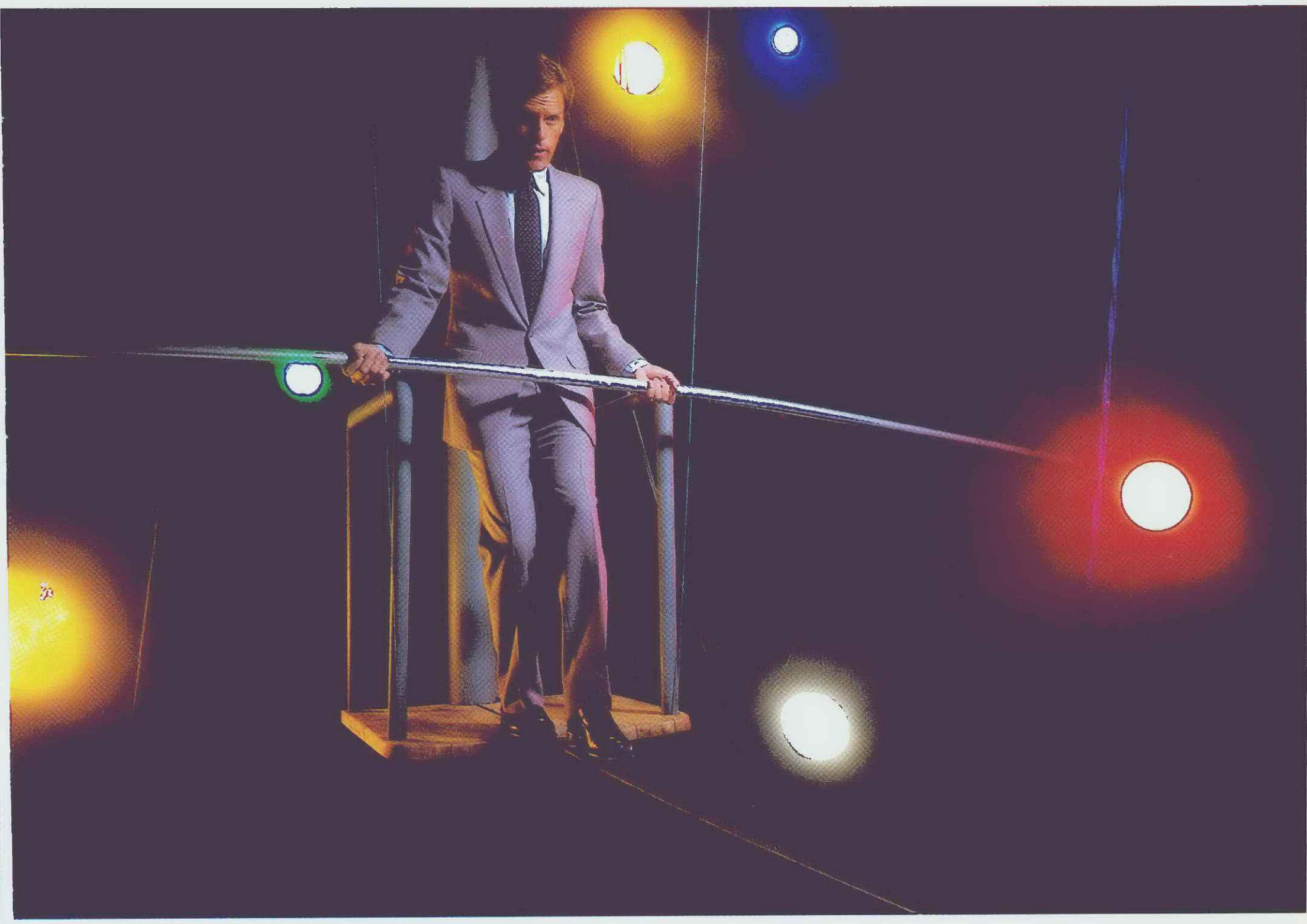

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Losses begin to pile up in financial guarantees

By JUDY GREENWALD

The possibility of large losses on financial guarantee insurance is scaring regulators—fueling the move to require financial guarantee insurance to be written on a monoline basis.

Regulators contend that limiting financial guarantee insurance to monoline companies protects their state guaranty funds in case of defaults (see story, page 22).

Some losses already have been reported in the financial guaranty industry. These include:

- The default on $2.25 billion in municipal bonds by the Washington Public Power Supply System in 1983. The default cost AMBAC Indemnity Corp. about $25 million in losses, for which it is fully reserved, said Michael Satz, senior vp and chief operating officer.
- Fireman's Fund Insurance Co. paid about $55 million to settle litigation over two financial guarantee policies it wrote on behalf of the Woodson Co. in San Rafael, Calif., which ran a trust deed investment program (*BI*, May 27, 1985).
- Indemnity Industrial Financial Corp., a Crum & Forster company that has stopped writing business, suffered about $10 million in losses as a result of insuring commercial paper issued by Buttes Gas & Oil Corp. A spokesman said the loss occurred in April 1985, but could provide no details.
- Mutual Fire, Marine & Inland Insurance Co. was placed under the Pennsylvania Insurance Department's supervision earlier this year, partly because of the default of about 620 limited partnerships for which the insurer provided financial guarantees in 1983 and 1984 through two managing general agents (*BI*, June 30).
- Cal-Farm Insurance Co. in Los Angeles was placed in conservatorship by the California Insurance Department after it was faced with demands for $112 million in payments under financial guarantee and surety bonds written on its behalf (*BI*, July 29).
- The California Insurance Department also took control of Glacier General Assurance Co., a Missoula, Mont., firm. Glacier had written surety bonds on mortgages that were part of the mortgage-backed securities that subsequently resulted in a $95 million loss for BankAmerica Corp. (*BI*, May 27, 1985).
- Insurers including Old Republic International Corp. and Ticor Mortgage Insurance Co. suffered losses when Equity Programs Investment Corp., a subsidiary of Community State Savings & Loan Assn. of Bethesda, Md., missed payments on $1.4 billion of mortgage-backed securities (*BI*, Sept. 2, 1985; Dec. 2, 1985).

Despite the losses, Mr. Satz says, 'municipal bond insurance is not an inherently dangerous product.'

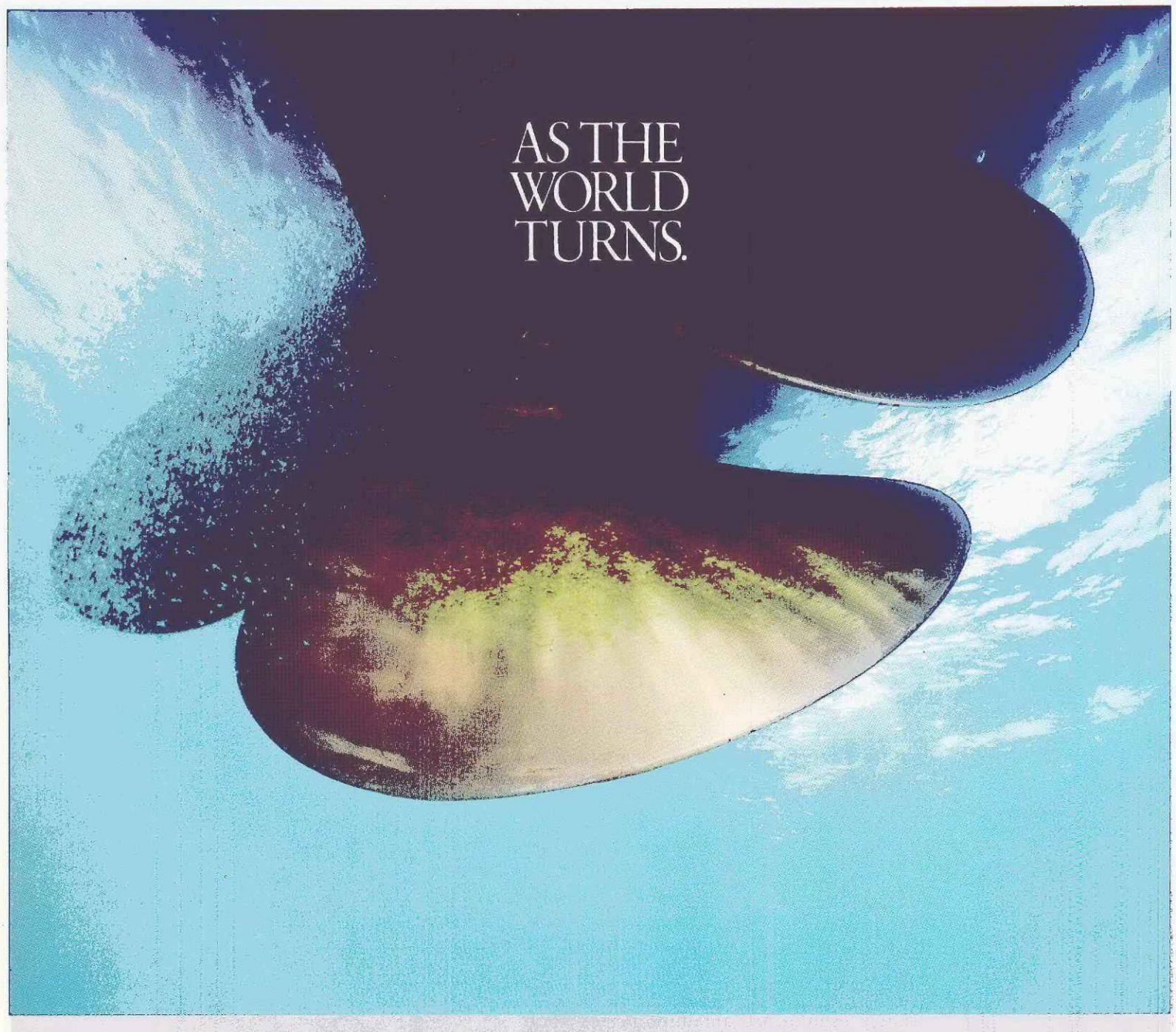
In addition, AMBAC's Mr. Satz said the company may have to pay "several hundred thousand dollars" in losses because industrial development bonds covering four building projects in the South developed by Knoxville, Tenn.-based Franklin L. Haney are in default. The value of the bonds was $79 million.

"These projects have not been providing revenue to pay the total debt service," he said. The loss will not have a material impact on the company's earnings, Mr. Satz said.

But, Mr. Satz said that despite the losses AMBAC has had, "municipal bond insurance is not an inherently dangerous product."

Although it deserves "serious and consistent underwriting, it does not, or should not, give rise to a specter of catastrophic losses," he said. He emphasizes that in almost every case, losses reported actually represented cash shortfalls, rather than total losses.

Even in the corporate sector, he said, a study shows "salvage" rates for investment grade obligations to be as high as 40%, while for municipal bonds, the percentage is likely to be even higher. ■



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What's available in financial guarantees

By JUDY GREENWALD and ROBERT A. FINLAYSON

Despite concern that the Tax Reform Act of 1986 will reduce demand for some types of financial guarantee insurance, many are still popular products.

Following are status reports on the financial guarantee coverages most attractive to buyers:

• **Change-in-law insurance.** The capacity problems that affected most of the property/casualty insurance market in the last year have had little impact on the market for coverage designed to protect investors against changes in government regulations that would adversely affect a development project.

Known as change-in-law insurance, this coverage is designed to repay debt service and provide for operation and maintenance costs for development projects that are held up or made uneconomical by changes in government regulations that occur after the coverage is bound.

Often referred to as force majeure coverage, this type of insurance is typically written in conjunction with a builders risk policy.

"Underwriters are still very interested in this type of coverage," says to Terry Jacobson, assistant vp with MacLean, Oddy & Associates Inc. in Dallas, a subsidiary of London-based Sedgwick Group P.L.C. MacLean Oddy & Associates is one of the leading wholesale brokers for force majeure coverage.

Mr. Jacobson says the force majeure policy form has changed somewhat over the past year.

"It's evolved to the point where it's a little bit better and clearer," he says.

Basically, underwriters have split force majeure coverage into two policies: one for the construction phase and one for the operational phase, Mr. Jacobson explains.

Mr. Jacobson says that it is very important to place the force majeure coverage together with a builders risk policy and that the two policies dovetail.

"The force majeure underwriters are very concerned with what is being insured under the builders risk coverages," he says. Basically, the underwriters want to make sure the policies do not overlap, he adds.

Generally, Mr. Jacobson says, capacity has not been a problem for most industrial projects.

"The type of capacity available really depends on the type and technology of the project that you're looking at," he explains. "We've seen very standard projects in which capacity that was required was not a problem. And then there's been projects that have been a lot more technically involved that have required a little bit more work to find the capacity," he adds.

The cost of the coverage is typically under 1% of the capital cost of the project, making it a bargain in comparison to other type of insurance coverage, he says.

Force majeure coverage is underwritten almost exclusively by Lloyd's of London syndicates. "It's generally common knowledge that this type of sophisticated or innovative coverage would be led out of Lloyd's," Mr. Jacobson says.

Demand for the coverage has slacked off somewhat over the past nine or 10 months because of a reduction in the number of construction projects under way. But Mr. Jacobson says there is still enough business to "keep us pretty busy."

• **Weather insurance.** Traditionally, weather insurance has been largely limited to coverage for outdoor concerts, sporting events, state fairs and ski resorts.

But, Good Weather International Corp., one of the nation's largest weather insurance underwriters, hopes to change this. Good Weather is improving its existing weather insurance products to make them more attractive to companies in weather-sensitive businesses, and it is trying to expand the use of weather as a marketing tool.

Good Weather also hopes to break into the field of crop insurance, once the exclusive domain of the federal government.

Henry L. Fox, president of Jericho, N.Y.-based Good Weather, says these three areas should allow the company to greatly expand its premium volume, which is expected to be about $5 million to $7 million in 1986, compared with $4 million to $5 million in 1985.

Mr. Fox says crop insurance, which pays the grower the value of crops destroyed or damaged as a result of bad weather, has the greatest potential for growth.

"It's endless and gigantic," Mr. Fox says, noting that the market for crop insurance is "in the tens of millions of dollars."

Currently, the federal government is the largest market for crop insurance, but Mr. Fox says the Reagan administration wants to privatize the Federal Crop Insurance Corp., a division of the Department of Agriculture.

Mr. Fox also is optimistic about Good Weather's "cash-flow stabilization" insurance. This product is designed for businesses that depend on the weather, such as ski resorts and bathing suit manufacturers.

"Every entity that's in a weather-sensitive business or service is geared to handle a bad season," Mr. Fox says. "But what we've done is create a cash-flow stabilization program—if you get two bad seasons in a row, we'll pay."

He says companies can pay a fixed fee and know that if they have two bad seasons in a row they won't go bankrupt.

The program also is designed for municipalities that must budget for snow removal expenses. If a city gets a heavy snowfall one season, weather insurance would pay the additional snow removal costs, Mr. Fox says.

Good Weather's marketing insurance is designed for manufacturers of snow blowers, air conditioners and other equipment where demand is closely tied to current weather conditions. Mr. Fox says the insurance allows companies to offer customers a rebate if, for example, they buy an air conditioner and the temperature stays abnormally low.

Good Weather has an exclusive arrangement with Chubb Corp., for which it underwrites the insurance and arranges the reinsurance for coverage written on Chubb paper.

Mr. Fox says Good Weather has a computerized data base of

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Financial covers

Continued from previous page
weather information from the National Weather Service that is used to underwrite its policies.

"We're weather bookies and we use mathematical skills," he says.

Premiums are based on the location and the peril, such as "no snow" or "too much rain," Mr. Fox says.

● **Accounts receivable insurance.** A high business failure rate in 1986 prompted an increased interest in accounts receivable, or bad debt, insurance, but underwriters of the coverage saw losses increase substantially compared with 1985.

Despite this, insurers offering this coverage, which protects companies if their debtors fail to pay their bills, say they hope to continue to increase their premium volume.

Insurers estimate they will write $67 million in premiums in 1986, compared with about $57 million in 1985.

American Credit Indemnity Co. of New York, a division of Baltimore-based Control Data Co., is the largest market for accounts receivable insurance. American Credit wrote about $46 million in premiums in 1985 and expects to write about $48 million this year.

A spokeswoman for the company said losses were up significantly over last year, but the insurer will continue marketing efforts to expand this business.

Continental Insurance Cos., through its newly created subsidiary Continental Guaranty & Credit Corp., is the second-largest market for accounts receivable insurance, with about 25% of the market.

Steve Taylor, senior vp with Continental Guaranty, says the insurer plans to write about $16.5 million in premium in 1986, up about 10% from its 1985 premium volume of $15 million.

Mr. Taylor says Continental also experiencs2ed an increase in losses in 1986, but plans to continue efforts to expand this line of business.

The market for bad debt insurance "remains basically untapped," Mr. Taylor says. He estimates that the total market for bad debt coverage is about $100 million in premium.

Fidelity & Deposit Co. of Maryland, owned by Swiss Reinsurance Co. and Zurich Insurance Co., entered this market in 1984. Fidelity expects to write about $2 million in premium this year and hopes to write $4 million in 1987.

Carroll J. Fitzgerald, senior vp with Fidelity, says the company is proceeding slowly but wants to continue to expand in this market. It is still in the process of staffing up and training its sales force.

Like Mr. Taylor, he says this is largely an untapped market.

"We are not going after American Credit's business. We're going after new business," Mr. Fitzgerald says.

Policyholders are typically small and midsized businesses.

● **Movie completion bonds.** A dramatic increase in the number of motion pictures being produced in the United States is leaving underwriters of movie completion bonds as breathless as an old fashioned Hollywood scandal.

Film Finances Inc., the largest U.S. underwriter of movie completion bonds, has nearly doubled its business during 1986, says Lindsley Parsons Sr., executive vp of the Hollywood, Calif.-based underwriter.

Mr. Parsons says Film Finances has guaranteed the completion of nearly 60 films so far this year, nearly twice the 32 films it guaranteed in 1985.

"That's a tremendous number of pictures to be handled by one guarantor," he says. To handle this increased business, Mr. Parsons says Film Finances has expanded its staff and hired an attorney to handle legal work in-house.

Film Finances underwrites and assumes the risk for the films it guarantees, but reinsures a portion of the exposure with Lloyd's of London underwriters, Mr. Parsons says.

Basically, movie completion bonds provide the financial backers of a film with a guarantee that the film will be completed on time. If it is not, the bond would become due and payable to the film's financial backers.

So far this year, Film Finances has yet to have a loss. "Sometimes when you get a big loss in this business, why it's good advertising," Mr. Parsons jokes.

The Completion Bond Co. Inc. of Beverly Hills, Calif., is Film Finances' biggest competitor.

Last year, Completion Bond guaranteed 25 films. A spokesman for the company said its business also has grown dramatically.

● **Residual Value Insurance.** The Tax Reform Act of 1986 may fuel the growth of residual value insurance, which had faltered during the tight market.

The residual value market was slower to develop than expected, said Doug Morris, president of D.G. Morris Inc., a reinsurance intermediary, and therefore insurers started to lose interest in the product.

"People had higher expectations for it, and when development was as slow as it was, people lost some enthusiasm for it," he said.

Residual value insurance guarantees an asset's worth in the future, with insurers indemnifying the policyholder if the asset's value falls below a specified level during the policy period.

The coverage permits financial institutions in particular to price leases more competitively and all companies in general to strengthen their balance sheets by carrying equipment at the insured residual value rather than at book value, which is normally lower.

Douglas Weltz, vp at Corroon & Black Inc. in New York, said the tax bill eliminates the investment tax credit, which permits equipment owners to deduct a percentage of an asset's purchase price from their tax bill.

This change will force lessors to either charge considerably more to lease equipment or be faced with having it hold a higher residual value on their balance sheets when the leasing period is over.

The latter factor, in particular, puts financial institutions, which are major lessors of equipment, at a disadvantage because, depending on their structure, they cannot assume at the end of a lease that an asset is worth more than either 20% or 25% of its acquisition cost.

However, they can obtain third-party guarantees, such as residual value insurance, of that residual value.

Mr. Weltz estimates premiums in the residual value market are about $24 million. Mr. Morris said the most active market is White Plains, N.Y.-based Residual Value Management Corp., a subsidiary of Old Republic. In addition, the Clarendon Insurance Group writes some residual value insurance, he said.

John F. Gross, managing director and Marsh & McLennan Inc. in New York, added American International Group "may look" at residual value deals as well.

Some residual value insurance also is being written by Financial Insurance Risk Management in Milwaukee, Wis., a subsidiary of Government Employees Insurance Co. in Washington.

Continued on page 20

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Financial covers

Continued from page 18

Also, International Capital Equipment Ltd. in Chicago, while not an insurance company, guarantees the future value of assets through a commercial contract, called an Equipment Purchase Agreement, under which it agrees to buy the equipment at a certain date at a particular price. Its contracts are backed by the Travelers Insurance Co.

● **Systems performance.** A limited type of systems performance coverage became available in February, according to David Rudolph, manager, credit enhancement consulting in Alexander & Alexander's Chicago office.

This type of insurance, which will be written by Hartford Steam Boiler Inspection & Insurance Co., induces debt financing, generally for energy-related projects.

The lender is assured he will be repaid if any part of the system fails, said Mr. Rudolph.

No policies have been written yet, but A&A has commitments from Hartford on four different projects, for which financing is being arranged. Mr. Rudolph said there is no market now for systems performance insurance that guarantees a contractor's work.

● **Commercial Paper.** Financial Security Assurance of New York, which began insuring corporate obligations about a year ago, had $2.5 billion of insurance in force as of Sept. 1 (see story, page 16).

And, Aetna Life & Casualty, which has insured commercial paper for 14-15 years and will handle both stock or debt offerings, continues to do "a handful of these a year," said David H. Elliot, vp of Aetna's financial guarantee department.

● **Lease Insurance.** Commercial and tax-exempt or municipal leasing are "both alive and somewhat well," which could boost sales of lease insurance, which pays if a lessee defaults, said Mr. Morris of D.G. Morris.

But, right now there is not enough capacity or trained underwriters to "to do the type of volume that's there," he says, although several underwriters of financial guarantees offer the product.

Municipal leasing in particular has been hurt by the tax bill, which discourages tax-exempt leasing. But insurers have cut rates, so municipal lease insurance is "as attractive as before," said Mr. Morris.

Dennis Layne, president of Milwaukee-based Financial Insurance Risk Management, a managing general agency for Government Employees Insurance Co., said his firm underwrites pools of commercial leases. ■

Insurers seek equality under SEC's rules

By JUDY GREENWALD

WASHINGTON—Congress will consider action next year that would permit insurers to compete more effectively with banks in the potentially lucrative field of guaranteeing corporate securities.

Currently, companies that want to issue corporate bonds backed by insurance must go through the time-consuming process of registering their debt with the Securities and Exchange Commission.

But, under the Securities Act of 1933, banks are exempt from registering their own securities and securities guaranteed by a bank are exempt from registration. In practice, the SEC has agreed to accept letters of credit as bank guarantees, said Peter E. Hoey, senior vp at Financial Security Assurance in New York.

Mr. Hoey said FSA, which specializes in insuring corporate debt, has been fighting for legislation to create a more level playing field.

And, Congress has agreed to the matter should be studied.

However, at one point it looked as if Congress might do more than study the issue. Sen. Alfonse M. D'Amato, R-N.Y., chairman of the securities subcommittee of the Senate Committee on Banking, Housing and Urban Affairs, had proposed that corporate bond issues be exempt from SEC registration if they were guaranteed by an insurance company with a Triple-A rating.

The provision was included in a bill tightening federal regulation of government securities dealers that was approved by the Senate earlier this month.

However, the provision was not included in a parallel House version of the bill, and it subsequently was eliminated in a joint House-Senate conference.

The compromise bill, however, which was approved by Congress earlier this month, includes a provision for the SEC study the issue and present a report to Congress in six months.

And, Mr. Hoey said Congress is expected to hold hearings on the issue during the next session.

Mr. Hoey said he does not object to the delay. "We don't want to rush into it," he said.

A letter sent to Sen. D'Amato from SEC Chairman John Shad states the "comparative disparities" between banks and insurers could be addressed in four ways:

● Congress could repeal the bank exemption under the Securities Act.

● The SEC could handle the issue by regulatory action, because the securities law actually states that banks are exempt from registering their "guarantees." Historically, the SEC has considered letters of credit to be "guarantees." The SEC could reconsider whether to regard LOCs as guarantees.

● The SEC could be given rulemaking authority by Congress to exempt securities guaranteed by insurance companies.

● Congress could create an insurance guarantee exemption, which is the approach that was taken by Sen. D'Amato.

The letter did not say which alternative the SEC favors. However, the SEC has said it supports a recommendation of Vice President George Bush's Task Group on Regulation of Financial Services that banks no longer be exempted from registering their securities with the SEC, according to Mr. Hoey.

Theoretically, this recommendation could be extended so that banks could no longer issue letters of credit for other corporations as well, Mr. Hoey said.

He said that corporate transactions now represent only one-tenth to one-sixth of the municipal bond market. But, he said, "I think you will see the growth of credit enhancement to corporate transactions will grow dramatically over the coming years."

Legislation would "allow us to compete with domestic and foreign banks for business," he said.

Mr. Hoey said he supports legislation that would permit only top-rated insurers to back corporate debt and would require insurers to meet certain disclosure and filing requirements that could be accomplished without time-consuming delay. ■

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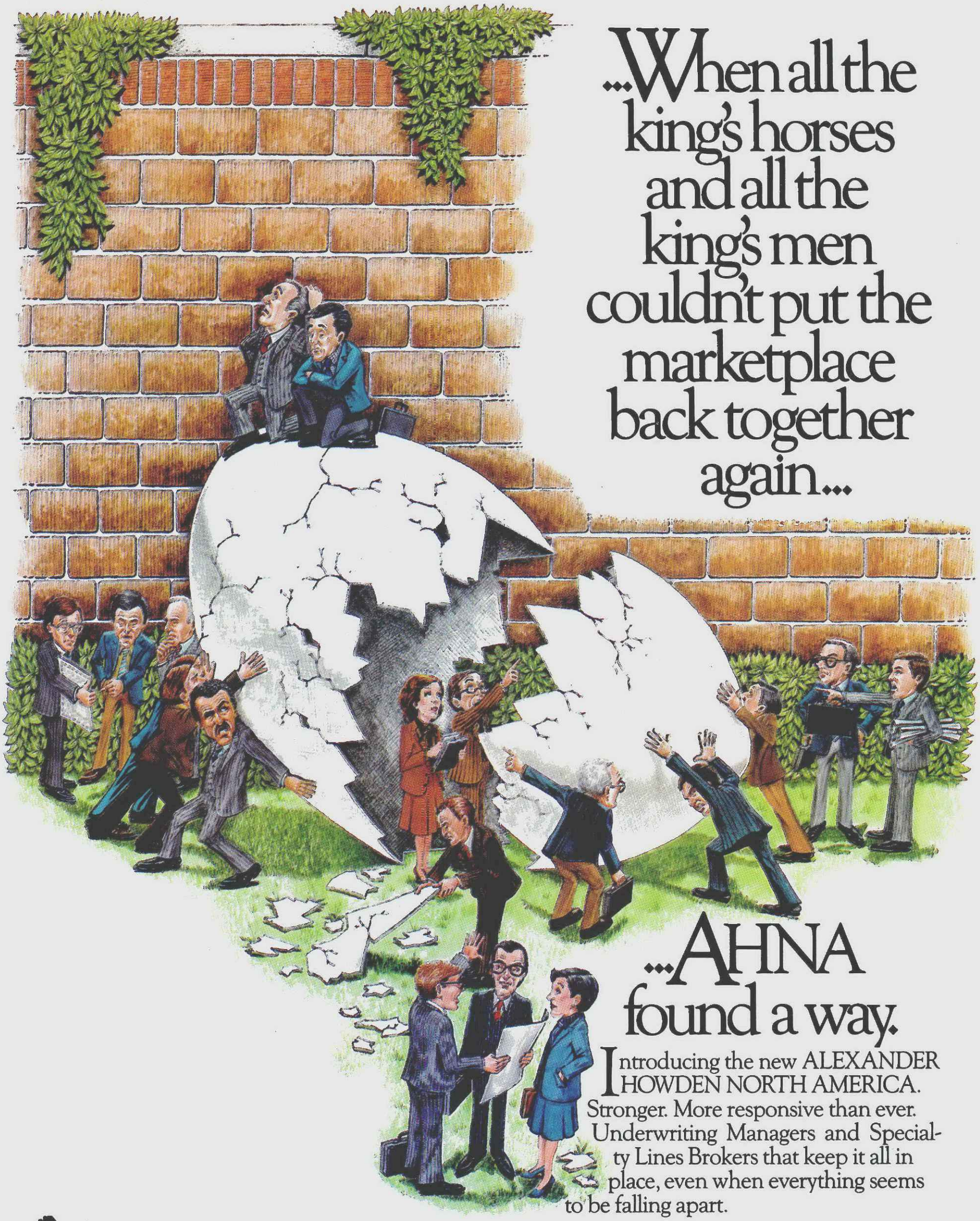

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Regulators eye financial guarantee rules

By CAROL CAIN

Insurance regulators who recently endorsed a model law setting parameters for financial guarantee insurance are waiting to see how it fares in New York before taking it up in their own states.

And legislators will consider the issue at next month's annual Conference of Insurance Legislators.

However, at least one state—Illinois—is creeping ahead with a less encompassing state Insurance Department "rule," rather than legislation, for the underwriting of municipal bond guarantees.

California also enacted legislation to regulate municipal bond insurance that took effect Jan. 1.

Fearful that an unmonitored financial guarantee market could lead to insurer insolvencies, members of the National Assn. of Insurance Commissioners began drafting the model bill early last year.

Many of its provisions were contained in one of three pieces of legislation considered earlier this year by the New York Legislature.

While none of those bills—A.B. 11347, A.B. 11348 (with a companion bill in the Senate, S. 9078A) and A.B. 11349, drafted by the insurance industry—passed the Legislature before it adjourned, their substance was taken up at an Oct. 1 hearing before the Assembly Insurance Committee, chaired by Assemblyman Howard Lasher, D-Brooklyn, who introduced all three bills in May.

A single bill is expected to be introduced next session—an amalgam of testimony from this month's hearing and additional research, Mr. Lasher said.

However, he said that he believes members of his committee are leaning toward a measure similar to A.B. 11347, which was drafted by the Insurance Department and aligns itself with the NAIC model (*BI*, June 30).

"We're leaning. . .toward a monoline approach," Mr. Lasher said.

Such an approach, as called for by the NAIC, would prohibit multiline insurers from writing any financial guarantee insurance.

Among other provisions, A.B. 11347 called for minimum start-up capitalization of $40 million and required insurers to maintain capital at $35 million.

In addition, A.B. 11347 would have required financial guarantee insurers to maintain capital, surplus and contingency reserves in the aggregate of at least 0.29% of all outstanding liabilities for municipal bonds, 0.57% for special revenue bonds, 1% for industrial development bonds, 4% for consumer debt and investment-grade obligations and 10% for all other obligations not of investment grade other than consumer debt.

The second Assembly bill—A.B. 11348, and its Senate companion, S. 9078A, introduced by Sen. John R. Dunne, R-Garden City—would have allowed multiline insurers to write municipal bond insurance but no other type of financial guarantee insurance.

Other provisions of this measure stipulated that an insurer may only get 20% of its premium from and allocate 20% of its capital to financial guarantees.

And, under this bill, insurers specializing in financial guarantee insurance would be required to have minimum start-up capital of $75 million and maintain capital of $65 million (*BI*, May 12).

A.B. 11348/S. 9078A also would have required financial guarantee insurers to maintain capital, surplus and contingency reserves in the aggregate of at least 0.33% of all outstanding liabilities for municipal bonds, 0.33% for special revenue bonds, 1% for investment-grade industrial development bonds, 4% for non-investment grade industrial development bonds, 1.5% for consumer debt and investment-grade obligations and 4% for all other non-investment-grade obligations other than consumer debt.

Sen. Dunne is expected to reintroduce his bill in a "substantially identical form" next session, said aide Phillip J. Harrington Jr.

Sen. Dunne's bill is a hybrid of the measure the Insurance Department drafted based on the NAIC model and A.B. 11349, he added.

That last measure—A.B. 11349—would have allowed multiline insurers to write any and all types of financial guarantee insurance. However, it stipulated that insurers may only get 25% of premium from and allocate 25% of capital to financial guarantees.

This bill, drafted by the insurance industry, required insurers to maintain $50 million in capital.

In addition, A.B. 11349 would have required financial guarantee insurers to maintain capital, surplus and contingency reserves in the aggregate of at least 0.33% of all outstanding liabilities for municipal bonds, 0.33% for special revenue bonds, 0.66% for industrial development bonds, 1.33% for consumer debt and investment-grade obligations and 2% for all other obligations not of investment grade other than consumer debt.

The Assn. of Financial Guaranty Insurors supported A.B. 11349 in its testimony Oct. 1 before the Assembly Insurance Committee.

It "favors strong, even-handed regulation of financial guarantee insurance," said Robert Mackin, executive director of the nine-member group formed in May.

"We support minimum capital, reinsurance and reserving requirements, as well as risk limits that would enable financial guarantee insurers to pay claims on defaults of state and municipal bonds, investment-grade private debts and on consumer loans, as shown by the historic record of default experience," he said.

However, Michael E. Satz, president of the association, asserted: "We do not share the assumption

Continued on next page

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Continued from previous page
championed by some that financial guarantee insurance intrinsically represents a level of risk which warrants a regulatory approach that isolates, unduly restricts or prohibits financial guarantee products.

"Nor do we share the view that immediate regulatory action is required to avoid an inevitable crisis in the insurance industry," said Mr. Satz, senior executive vp and chief operating officer of AMBAC Indemnity Corp. in New York.

But regulators, reacting to several recent insurer insolvencies and near-insolvencies, are adamant in pushing for regulatory measures in the NAIC model bill.

Just 18 months after the NAIC study group first met on the issue, the entire group adopted a model bill, noted New York Insurance Superintendent James P. Corcoran, the study group chairman.

This "unprecedented, expeditious and unanimous adoption of the model" illustrates the "measure of urgency" the regulators felt, said Mr. Corcoran.

"An awful lot is going on in the financial guarantee market. . .that is worrisome and scary," said Nebraska Insurance Director Michael J. Dugan, another NAIC study group member.

But, he noted, regulators are willing to wait and see what happens in New York because the market is based in big financial centers, specifically New York.

Financial guarantee insurance is relatively new, Mr. Corcoran said in his testimony before the Assembly committee. "Fifteen years ago it did not exist," he said. "This business is growing at a rapid rate and is subject to little regulation."

It's difficult to determine the size of the market, though Mr. Mackin said the current premium volume is estimated at $500 million, and industry sources estimate the volume will reach $2 billion by 1990.

But the size of the market is not the issue, Mr. Corcoran said.

"We are now experiencing a crisis in the area of liability insurance. . . .Let us apply the lessons we have learned from this experience in order to avoid a crisis in this new and growing field of insurance," he testified.

"A failure of just one guarantor will undermine the confidence of the public in a concept which has been sold as the means of making their investments risk-free. Without the adoption of the monoline approach. . .a failure of an insurer could also have a devastating effect upon the property/casualty industry," Mr. Corcoran said.'

The superintendent also pointed out that in New York, as well as in most other states, financial guarantee insurance is not defined separately in insurance law. Multiline insurers report financial guarantee business as surety, credit or other lines of insurance, he said.

That also is illustrated in California, where no class of financial guarantee insurance exists in code. Instead, it is written as surety, credit or mortgage insurance, said Carol Fistler, an attorney with the California Insurance Department.

In 1985, California zeroed in on just one of the financial guarantee insurances—municipal bond insurance—and adopted a law that took effect Jan. 1, 1986.

That law requires that an insurer set up a contingency reserve fund equal to half its earned premiums on municipal bond guarantees.

Illinois also is taking a narrow approach. A rule regulating only municipal bond insurance, currently before a legislative joint committee, is expected to be approved by mid-November, said Kenneth W. Smith, deputy director of property/casualty insurance for the Insurance Department.

The regulation, which is still being finalized, contains requirements similar to those in the NAIC model act, but it is not totally a monoline approach, he said.

He explained that while there is a certain advantage to monoline regulation, there are practical problems to be worked out concerning the standards of surplus.

Lack of definition of financial guarantee insurance in state law is why the NAIC model precisely defines financial guarantee insurance and removes those transactions that should be classified as financial guarantee insurance from the definitions of surety and credit insurance, Mr. Corcoran said.

And, requiring insurers to write financial guarantee insurance on a monoline basis will help regulators monitor this business, he said.

But, in his testimony to the Assembly committee, Mr. Mackin said strict regulation could have an adverse market impact: "The considered opinion of those managements now providing financial guarantees and who would like to remain in the business is that they would have to leave the business should they be forced to take a disproportionate share of the capital now available for all lines and dedicate it to financial guarantees."

Mr. Corcoran countered: "It is evident from the amount of capital which has been attracted by the existing monoline financial guarantee insurers and from the number of new companies being organized that investors view monoline carriers as investments which can operate profitably. . . Elimination of the multiline structure will not result in a shrinkage of capacity for financial guarantees."

But buyers, needing every alternative risk financing mechanism, are not convinced, said Jon Harkavy, director of governmental affairs for the Risk & Insurance Management Society. He is skeptical that restricting financial guarantee to a monoline approach is the only way to regulate.

State regulators, however, are firm on the need to regulate financial insurance on a monoline basis.

NAIC President Josephine M. Driscoll, Oregon's insurance commissioner, noted the impact of insurers' recent financial difficulties. "And with financial guarantee insurance, we're dealing with much bigger figures," she said.

The entire Oregon insurance code is scheduled for review in the next two years, and including the NAIC financial guarantee model probably will be considered, she said.

The model also will be the subject of "a long, hard look" before Nebraska's next legislative session begins in January, said Mr. Dugan. Similar study is expected in California and Illinois.

And, the NAIC model may be part of legislation introduced in Wisconsin next year; that move is under study by the state Insurance Department, said Randy Blumer, deputy commissioner and a member of NAIC's study group. ■

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ARKWRIGHT BOSTON INSURANCE

New firm rates financial guarantee insurers

By JUDY GREENWALD

The two credit-rating services that evaluate financial guarantee insurers face some new competition.

Duff & Phelps, a Chicago-based investment advisory and analytical firm, rated its first financial guarantee insurer, Financial Security Assurance Inc., which insures corporate obligations, and is gearing up to rate others as well, joining the field already occupied by Standard & Poor's Corp. and Moody's Investor Service Inc.

All three credit-rating agencies evaluate financial guarantee insurers' claims-paying ability. The rates given are carried over to the municipal bonds or commercial paper insured.

For instance, a policyholder's issue can carry a triple-A rating only if an insurer also has been rated triple-A.

When a financial guarantee backs an issue, it guarantees the insurer will meet the issuer's obligations if the issuer defaults. Because it increases a debt's rating, it can reduce the interest rate the issuer must pay investors.

Observers note that a top rating from S&P, Moody's or both is considered important for financial guarantee insurers.

For instance, the private placement memorandum distributed on behalf of Enhance Financial Services, parent company of Enhance Reinsurance Co., notes that "An essential component of Enhance Financial Services' business plan is the attainment, by Enhance Reinsurance, of a triple-A claims-paying ability rating from Standard & Poor's."

Vp Milton Meigs, explaining why Duff & Phelps entered the claims-paying rating business, said: "One of the key reasons for going into the business is we have indications from companies that, in essence, if you're doing quality work, there's always room for an additional competitor."

"We have had expressed to us from a variety of sources encouragement," Mr. Meigs said when asked if he had heard of dissatisfaction with the work being done by S&P and Moody's. Duff & Phelps is "forming an additional dimension to what's being done," he added.

However, Leon J. Karvelis Jr., executive vp and director of underwriting and research for the Municipal Bond Insurance Assn., the biggest municipal bond insurer that has received triple-A ratings from both S&P and Moody's, indicated his firm is unlikely to seek a Duff & Phelps rating as well.

Mr. Karvelis, who said his association had not been approached by Duff & Phelps, said he did not believe a rating from the firm would be "of much market value to us."

He added there is a charge for obtaining a rating, and that he was concerned about keeping overhead costs low. He would not say how much MBIA is charged for its S&P and Moody's ratings.

Mr. Meigs said his firm has not yet developed a standard evaluation procedure for determining ratings.

"We're still essentially in the formative stage of developing our program," he said.

Both S&P and Moody's have developed standard procedures for evaluating insurers, and the companies keep tabs on insurers' status throughout the year.

(Ratings recently changed and a list of companies with triple-A ratings from S&P and Moody's appear on page 12).

Among the criteria S&P looks at in evaluating an insurer's claims-paying ability is management quality, especially in the underwriting area, the quality of the paper being insured, and dispersion of risk, according to Robert Mebus, managing director of Standard & Poor's.

S&P wants to be sure, said Mr. Mebus, that not all an insurer's clients are concentrated in any one area so that if there is a default, the insurer can meet the terms of its original obligation.

S&P also ensures the company has adequate capital, a factor that includes the quality of its reinsurance and financial support from its parent company.

The rating agency also applies a "stress case" to financial guarantee insurers portfolios to determine how they would perform in the event of a major economic depression, using the Great Depression as a model, said Mr. Mebus.

For new companies, S&P will create five-year projection of results, then assume that a depression hits in the sixth year, Mr. Mebus said. For a company already in business, this depression scenario is worked out on an annual basis.

At Moody's, the quality of the business that is underwritten as well as its concentration "lead to a greater or lesser need for claims-paying ability and capital," said William DeSante, vp and associate managing director.

As a result, Moody's examines an insurer's portfolio in the aggregate in addition to looking at the credit-worthiness of particular issues. A diversified, high-quality portfolio is less apt to have problems than a concentrated, low-quality one, Mr. DeSante explained.

For example, an insurer that insures a lot of low-quality housing issues in New York City will need more capital than another insurer insuring a general obligation issue in Connecticut, North Dakota or New Mexico, Mr. DeSante said.

Similarly, Moody's may question whether an insurer has too many Florida deals, or if there is a heavy concentration in oil and gas—"anything that might tend to make the portfolio perform worse over time."

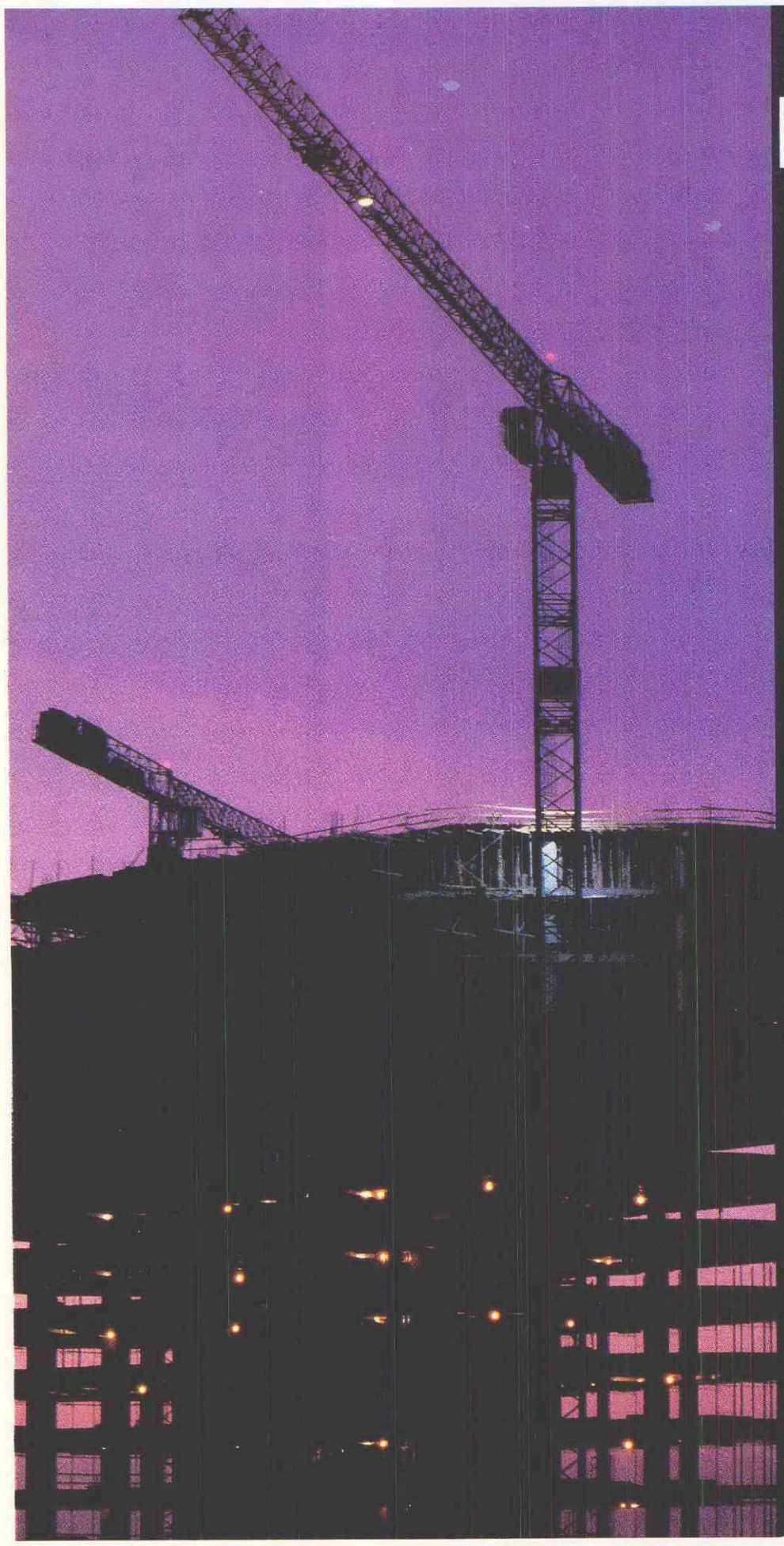
As with S&P, Moody's uses a Great Depression portfolio, taking into consideration that general obligation bonds should perform better today than they did in the 30's, while other types of issues, such as industrial development bonds, will tend to do worse than the general obligation bonds.

"We think it's important to distinguish between types of bonds and credit quality," said Mr. DeSante.

Moody's also looks at an insurer's investment portfolio, follows its pricing patterns and stresses credit quality.

"We think it's critical," Mr. DeSante said.

Also, Moody's rating for claims-paying ability would not be lower than that for senior debt rating. ■



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September 29, 1986

Alternative facilities easing D&O market

By STEVE TARAVELLA

The wave of new captive and mutual directors and officers liability insurers is improving conditions in the D&O insurance market, one of the tightest in this industry cycle.

While the long-term impact these companies will have on the market remains uncertain, the new captives and mutuals are increasing the amount of available D&O liability insurance capacity and developing coverage with more favorable terms than what commercial insurers offer.

"You're seeing a fundamental restructuring of the D&O marketplace. It won't ever be the same," says Richard Grayson, vp at Johnson & Higgins of Georgia in Atlanta. He helped develop Financial Institutions Reserve Ltd., a group captive in Bermuda offering up to $20 million in primary or excess D&O liability insurance.

FIRL is just one of perhaps a dozen new captive or mutual companies that insure or reinsure D&O exposures, either as their principal business purpose or in addition to writing general liability.

Among the others, most of which have been initiated by buyers but some of which enlisted help from brokers, are: A.C.E. Insurance Co. Ltd.; Bankers Insurance Co. Ltd. (BICL); Corporate Officers & Directors Assurance Co. (CODA); Directors & Officers Liability Insurance Ltd. (DOLI); Energy Insurance Mutual (EIM); Excess Risk Insurance Co. (ERIC); Oil Casualty Insurance Ltd. (OCIL); and X.L. Insurance Co. Ltd.

By using policies from these companies as building blocks, risk managers have increased coverage options beyond the maximum $65 million or $70 million available from the commercial market three months ago and the $50 million available about 18 months ago.

They can easily put together $75 million in claims-made coverage now and, with a little work, can probably arrange $100 million in limits, depending on their industry and exposure, insurers say.

Even that may rise slightly over the coming months, some insurers predict. Chubb Corp., which now offers $15 million in D&O limits, says it may be able to offer an additional $10 million by year-end. Harbor Insurance Co., which would like to offer more than the $5 million it now provides, is one of several companies encouraged by current reinsurance renewals.

But other insurers aren't so optimistic.

If D&O capacity does increase after January treaty renewals, it likely will be because insurers are retaining a greater chunk of each risk rather than reinsurers doling out more capacity, speculates Edward D. Norris, vp at Great American Insurance Co. in Schaumburg, Ill. Many insurers have already taken on larger net lines because of withered reinsurance support, he points out.

National Union Fire Insurance Co. of Pittsburgh, Pa., which is in the midst of its treaty reinsurance renewals, would like to write greater limits of D&O coverage, but sees little indication that its reinsurers, largely domestic companies, want to take on more U.S. D&O business, says Joseph P. DeAlessandro, president of the New York-based American International Group Inc. unit.

He says the new alternative markets, by offering more favorable terms and conditions than some commercial insurers, are inadvertently keeping traditional reinsurers away from D&O.

Reinsurers are much less likely to return to the D&O market because they do not want to take part in a line of insurance in which they might have to offer the same broad coverage terms as these alternative markets, he said.

National Union, by any standard the largest U.S. insurer of D&O exposures, now offers up to $20 million in D&O limits but occasionally writes more.

The company has tried to dissuade risk managers from joining CODA by offering them a reduced premium, report several sources, both insurers and brokers.

Mr. DeAlessandro declined to comment on what prices National Union has quoted potential CODA members. But, he did say, "Of course we've tried to retain our business; that's natural. If we feel they are good risks, we're certainly not happy to see them go to one of these 'self-help groups.'

"We are trying to discuss with our insureds the pros and cons of our coverage versus (that of) the other facilities."

One advantage National Union offers, he says, is its claims-handling experience.

"Clearer heads prevailing, the number of people who avail themselves of these facilities will diminish in time, or not go to them at all," he predicts.

Since the new facilities generally write in upper excess layers, only the biggest commercial D&O liability insurers, like National Union, that write these high layers, see them as competition.

The new facilities will be largely responsible for whatever price-softening does occur because commercial insurers realize that risk managers now have several viable alternative sources of D&O protection, speculates Warren G. Brockmeier, vp-risk management services at The Wyatt Co. in Chicago and a recognized D&O insurance authority.

There is some evidence that this

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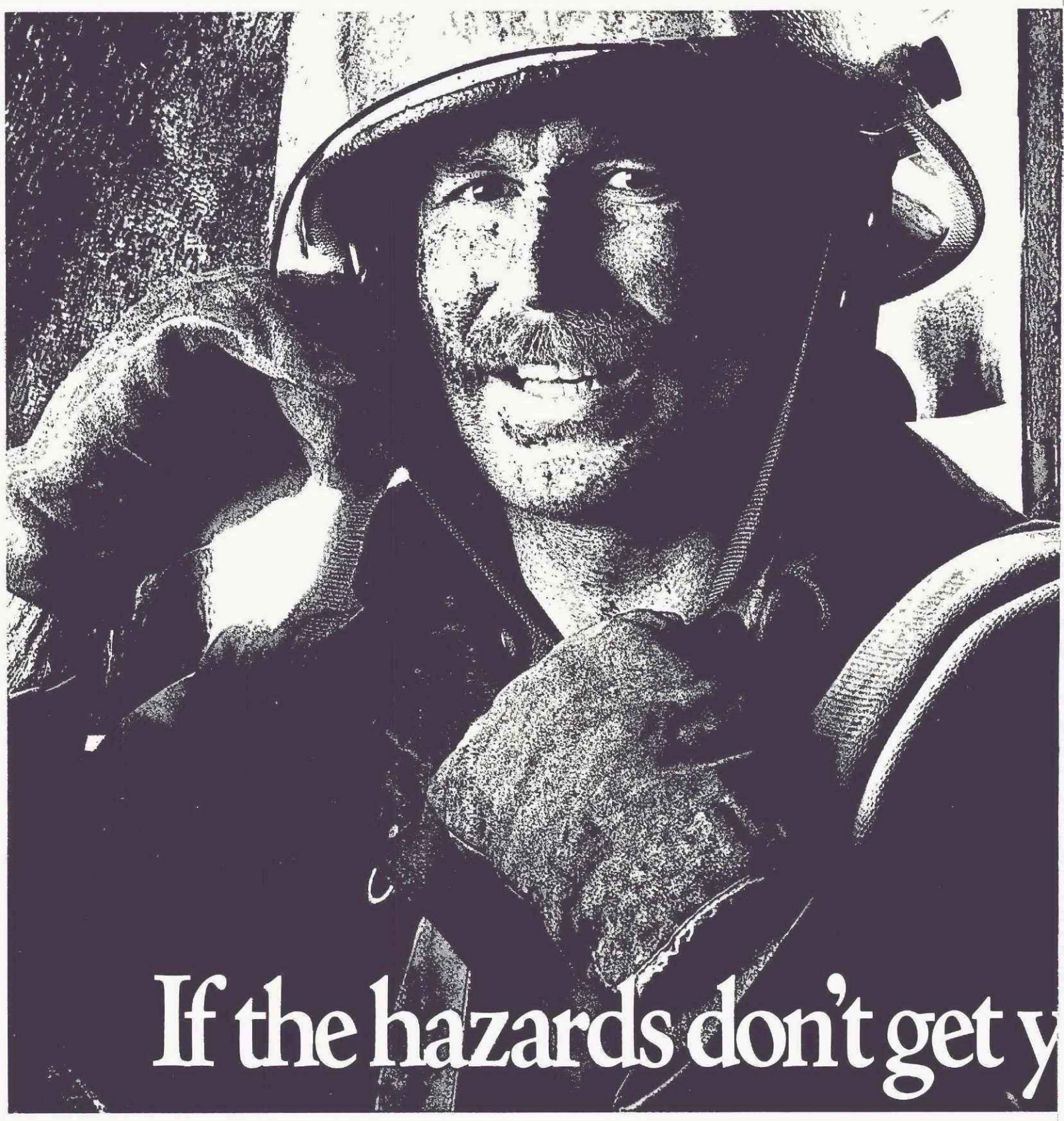

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is already taking place. J&H's Mr. Grayson recalls several instances in which financial institutions that were considering taking part in either FIRL or BICL, in development simultaneously, were offered dramatically more favorable renewal conditions by their commercial insurers.

"The commercial market has become somewhat more competitive with institutions that are eligible to join BICL," concurs Edith S. Lichota, senior vp-risk management for Irving Trust Co. in New York. Ms. Lichota helped spearhead BICL, a Bermuda mutual insurer, on behalf of major U.S. financial institutions.

D&O insurance buyers probably will see rate increases come January renewals, but these will be modest compared to those imposed last year, insurers say.

"We've achieved an overall level of income that will allow us to stabilize and provide the coverage for some length of time," according to Terry Van Gilder, senior vp and manager of Chubb Corp.'s national executive protection department in Warren, N.J.

Chubb's Federal Insurance Co. is perhaps the second-largest D&O insurer after National Union. Other commercial D&O insurers include: National Indemnity Co., part of Berkshire Hathaway Insurance Group; Great American Insurance Co., part of American Financial Corp.; CNA Insurance Cos. in Chicago; Associated International Insurance Co.; Harbor Insurance Co.; St. Paul Surplus Lines Insurance Co.; Tudor Insurance Co.; Old Republic Insurance Co.; Home Insurance Co. of Indiana in New York; RLI Insurance Cos. in Peoria, Ill.; and Calvert Insurance Co. Almost all offer less D&O capacity than a year ago.

Of the current D&O insurers, perhaps Berkshire Hathaway is the most flexible. It does its own underwriting, retains the entire exposure itself, insures both for-profit and non-profit entities, accepts business from both retailers and wholesalers, writes in a variety of industries nationwide, and will issue five-year policies—a rarity.

It can provide up to $15 million in D&O capacity, but usually commits only $10 million. Rather than apply one standard policy to all its D&O risks, the company tailors coverage to the needs of each, explains Ajit Jain, president of Berkshire Hathaway's special large risk division in Omaha, Neb.

For example, the company has so far issued a five-year non-cancellable D&O policy to five entities, among them a non-profit group and a large financial institution in New York, he says. These policies, which have been issued in limits of $5 million, $10 million and $15 million, typically come at a higher rate than annual policies, but sometimes provide for a return premium based on experience.

Berkshire Hathaway writes D&O mainly through its National Indemnity subsidiary, but writes some through its National Fire & Marine Insurance Co. unit, Mr. Jain says.

Great American issues up to $10 million in D&O coverage, usually in primary layers. It occasionally will commit up to $5 million in excess layers, but only excess of at least $10 million in underlying coverage, explains Vp Edward D. Norris in Schaumburg, Ill.

The insurer's policyholders include a variety of for-profit entities, but it does not aggressively seek policyholders in the oil and gas field, the high-tech electronic business, or health care-related businesses. The only banks it will consider insuring are those with between $100 million and $5 billion in assets.

A longtime insurer of bank D&O risks, Chicago-based CNA is expanding its D&O writings into other areas, like midsized retailers, food processors and manufacturers, reports Roger E. Lumpp, vp-financial markets division. CNA can issue up to $10 million in limits, and prefers to use its capacity in primary layers, he says.

Associated International is issuing half of that—$5 million—in either primary or excess layers through underwriting manager Stewart Smith East in New York.

Also writing $5 million is Harbor, but the Los Angeles insurer is mainly renewing primary layers for current policyholders. Harbor wanted to branch out into upper layers of corporate insurance programs, such as $5 million excess of $15 million, but found competition from the alternative markets, says Dan N. Milazzo, Harbor vp.

Harbor, a Continental Corp. unit, writes a variety of D&O risks, but does not insure financial institutions, new high-tech businesses, or businesses with large hazardous waste exposures.

St. Paul Surplus Lines writes D&O limits of $5 million in either primary or excess coverage exclusively through wholesale brokerage affiliate Swett & Crawford Group Inc.

Tudor is also in the $5 million capacity category, but doesn't always issue the whole amount. It insures "good, clean" for-profit and non-profit entities with less than $100 million in annual sales and less than $65 million in assets, says Jim Martocci, manager of D&O liability.

Tudor will consider some hard-to-place risks, but does not cover banks. Part of WESTCO Insurance Group in Ramsey, N.J., Tudor expects to write $13 million in gross premiums for D&O this year and about $20 million next year.

Through underwriting manager Chicago Underwriting Group (CHUG), Old Republic offers D&O insurance limits of $3 million, but does not insure the executives of banks or of property/casualty companies, according to CHUG Vp Marty Perry.

The insurer usually writes primary layers for companies with assets of $200 million or less and attaches in excess layers for companies with more than $200 million in assets.

Fischer Underwriting Group now writes up to $1 million on behalf of RLI Insurance Co. and Mt. Hawley Insurance Co., two affiliated insurers based in Peoria, Ill. The insurers cover non-standard, hard-to-place risks, like bankrupt companies or private businesses going public.

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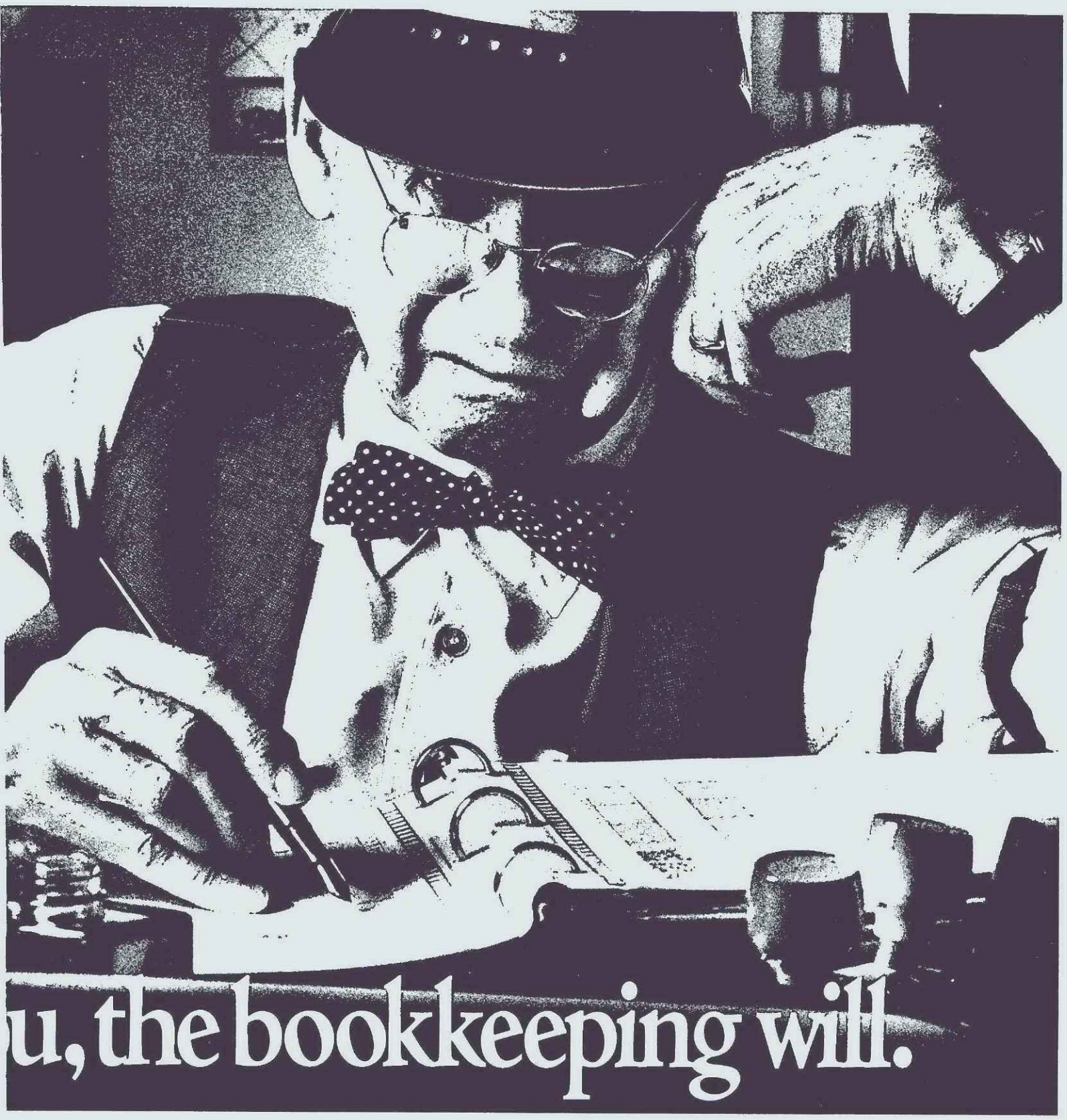

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D&O insurance market

Continued from previous page

Coverage is issued to directors of both for-profit and non-profit entities, in both primary and excess layers. Capacity was dropped from $5 million at reinsurance renewals last January, but Donald R. Fischer, president of the Hasbrouck Heights, N.J., underwriting manager, expects the insurers will regain the earlier capacity when reinsurance renews.

Fischer also writes up to $500,000 in primary D&O limits for financial institutions and health-related risks, like hospitals, clinics and nursing homes. Mt. Hawley shares the exposure on these policies with American Capacity Group, a 3-month-old affiliate also in Peoria.

Calvert Insurance Co. in New York writes D&O limits of up to $1 million for non-profit entities through Stewart Smith.

For maximum D&O protection, many risk managers are using both commercial insurers and alternative markets.

BICL, the first of the buyer-generated facilities to gain much attention, is perhaps also farthest along. As of Oct. 1, it had issued either a D&O policy or a bankers blanket bond to 17 of its 34 members. The mutual, which started May 1 and is managed by International Risk Management Ltd., offers $10 million limits on D&O and bankers blanket bonds.

BICL also agreed July 1 to issue co-indemnity paper on the well-known London D&O slip, reports Ms. Lichota. This agreement means London brokers can turn to BICL to fill in gaps of coverage—in either primary or excess layers—that London cannot complete, she says.

CODA will offer D&O limits of $25 million, principally in primary layers, to a variety of major U.S. businesses, sources say. It is believed to have support from about 35 businesses. D&O risks insured by CODA will be underwritten by A.C.E. in Bermuda beginning this week. J&H declined comment.

With up to $20 million in D&O limits, FIRL is making a name for itself, too. Its policies do not carry common exclusions, such as for suits brought by regulatory agencies, brought against an insured by a fellow insured, or stemming from unknown acts prior to coverage.

Energy Insurance Mutual, a Barbados insurer of about 40 electric and gas utilities, has offered two D&O options since opening its doors July 1. Utilities can purchase annual limits of $50 million per claim and $100 million aggregate or $25 million per claim and $50 million aggregate, depending on how much general liability insurance they buy from EIM.

Both D&O policies are excess of $25 million; at least $10 million of that underlying layer must be through a commercial insurance policy, says Irene M. Moszer, vp of Virginia Electric & Power Co. and chairperson of the task force that developed EIM (*BI*, April 21, 1986; Oct. 28, 1985).

Excess Risk Insurance is expected to offer reinsurance limits of $15 million, according to officials at Chase Investment Bank, one of the organizers. The monoline company was expected to begin writing Oct. 1, but executives at Chase did not return phone calls about its status.

Oil Casualty Insurance Ltd., a Bermuda mutual that opened June 1, offers D&O insurance limits of $50 million, excess of at least $20 million for the petroleum industry, says Jim McCullough, risk and insurance manager at Unocal Corp. in Los Angeles, an OCIL policyholder.

OCIL, one of only a few markets for a three-year D&O insurance policy, has issued 24 policies so far. Many of these policyholders have purchased the full $50 million, notes Doyle Stephens, OCIL senior vp in Hamilton, Bermuda.

The self-managed mutual is an offshoot of Oil Insurance Ltd., the long-established petroleum industry captive in Bermuda, and is open only to OIL members.

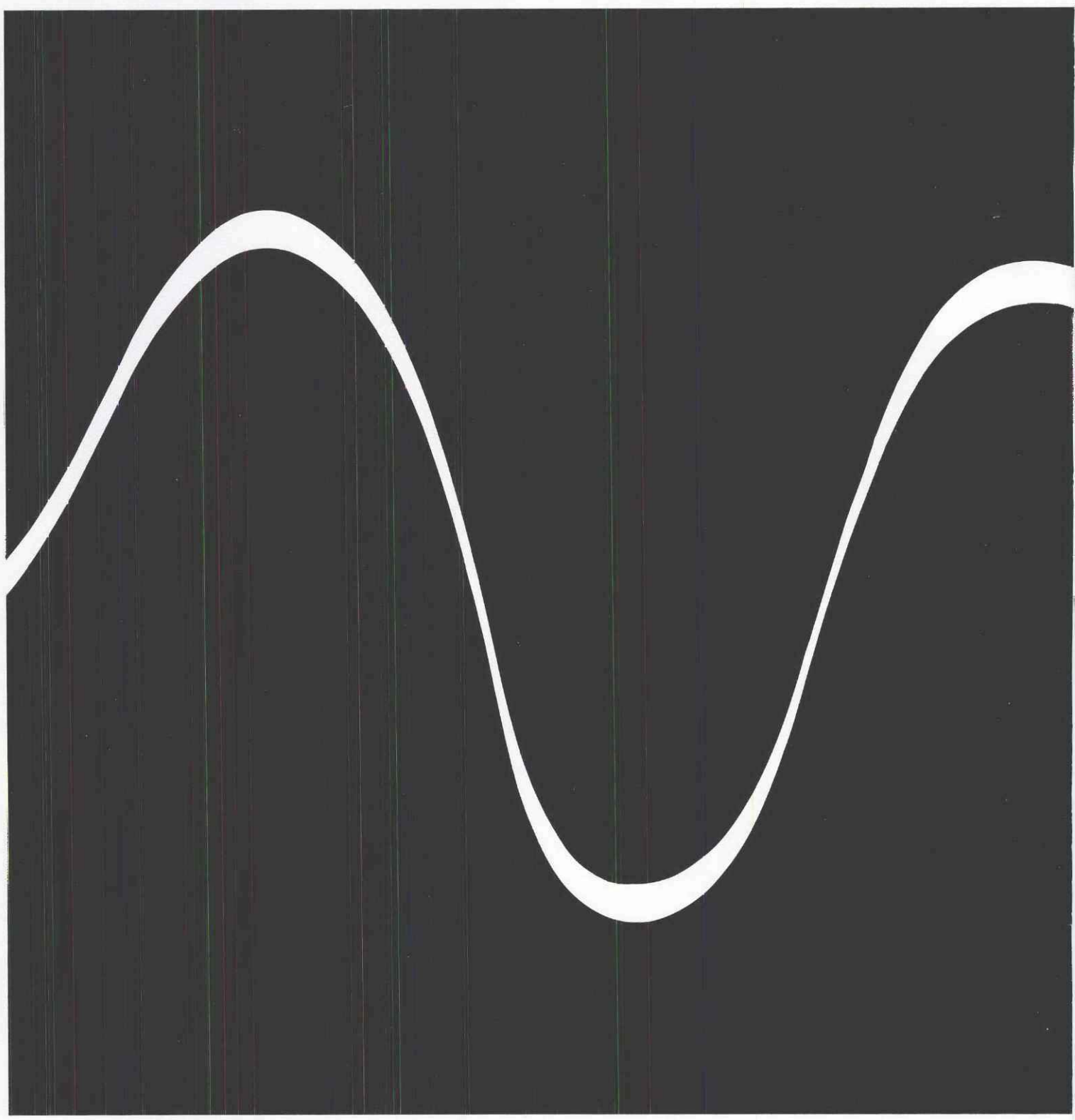
Businesses can buy D&O coverage of $15 million excess of at least $20 million from X.L. They can buy at least $10 million in D&O insurance from A.C.E., but can increase that amount in $5 million increments up to $50 million depending on how much general liability coverage they buy from A.C.E. and how much D&O they buy from other insurers, explains John Cox, chairman and chief executive of A.C.E., which also writes for X.L.

A business must buy general liability coverage from A.C.E. or X.L. before either will issue it D&O coverage. About 60% of the businesses that bought excess liability coverage from A.C.E. also bought D&O insurance, Mr. Cox estimates. A.C.E. took in $80 million in gross premiums for D&O coverage in its first year, which closed about two weeks ago, he says. ■

These markets will underwrite D&O policies

The following are markets for D&O liability insurance:

- Associated International Insurance Co. and Calvert Insurance Co.: Stewart Smith East, 123 Williams St., 27th floor, New York, N.Y. 10038; 212-964-2929.
- Bankers Insurance Co. Ltd. (BICL): International Risk Management (Bermuda) Ltd., Anna Summers, P.O. Box 660, Hamilton, Bermuda, HMCX. 809-295-0713.
- Berkshire Hathaway Insurance Group: Ajit Jain, 3024 Harney St., Omaha, Neb. 68131; 402-346-7400.
- CNA Insurance Cos.: See your independent agent.
- Directors & Officers Liability Insurance Ltd.: Carol Feathers, Argus International Management Ltd., 12 Wesley St., Hamilton, 5, Bermuda; 809-295-2021.
- Energy Insurance Mutual: Bryan Cooper, general manager, Sedgwick Group Management Services, Musson Building, Hincks Street, Bridgetown, Barbados, West Indies; 809-436-7636.
- Federal Insurance Co.: Ralph Jones, assistant vp, Chubb & Sons., 15 Mountainview Road, Warren, N.J. 07060; 201-580-2876.
- Financial Institutions Reserve Ltd. (FIRL): Peter J. Willitts, president. At J&H (Bermuda) Ltd., Victoria Hall, P.O. Box HM 1826, Victoria Street, Hamilton 5, Bermuda; 809-292-4402.
- Great American Insurance Co.: Scott Wallace, marketing director, P.O. Box 66943, Chicago, Ill. 60666; 312-519-0640.
- Harbor Insurance Co.: See your wholesale marketer.
- The Home Insurance Co. of Indiana: John Sheeran, vp, 59 Maiden Lane, New York, N.Y. 10038; 212-530-6949.
- National Union Fire Insurance Co. of Pittsburgh, Pa.: 70 Pine St., New York, N.Y. 10270; 212-770-7000.
- Oil Casualty Insurance Ltd. (OCIL): Doyle Stephens, senior vp, P.O. Box HM 1751, Hamilton, Bermuda, HMGX; 809-295-0905.
- Old Republic Insurance Co.: Marty Perry, vp-Chicago Underwriting Group, 211 W. Wacker Drive, Chicago. Ill. 60606; 312-750-8800.
- RLI Insurance Co. and Mt. Hawley Insurance Co.: Fischer Underwriting Group, Hasbrouck Heights, N.J.; 201-288-8620.
- St. Paul Surplus Lines Insurance Co., through Swett & Crawford Group Inc.
- Tudor Insurance Co.: Jim Martocci, 48 South Franklin Turnpike, Ramsey, N.J. 07446; 201-825-3300. ■



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Big isn't better for agents' E&O cover

By LINDA J. COLLINS

Market availability for agents and brokers errors and omissions coverage largely depends on the size and scope of the agency or brokerage, observers say.

Typically, agencies that generate less than $20 million in annual premium volume and are not heavily involved in excess/surplus, specialty or wholesale brokerage business, can readily find $5 million in limits on their own or through association-sponsored programs.

Limits may be lower than two years ago, however, and premium costs have at least doubled.

But, specialty agencies and large agencies and brokerage houses are having greater difficulty obtaining adequate E&O coverage.

"There's no problem with coverage availability" for small- to medium-sized agencies, said Willis Hargrave Jr., president of Harco Insurance Services, an agency in Houston, and chairman of the National Assn. of Professional Insurance Agents' E&O committee.

"The problem for agents has been pricing. Almost without exception, most association E&O programs have experienced at least 100% rate increases since January of 1984," Mr. Hargrave noted.

"I don't think the mainstream agent is having that much trouble placing his E&O coverage—it's the cost," agreed James D. Wallace, president of E&O Professionals Inc., the Kansas City, Mo.-based underwriting manager for SAFECO Insurance Cos. in Seattle.

"The market problem for insurance agents is with specific kinds of agents who are doing specific things—third-party administration of workers compensation, a lot of ocean marine business, excess/surplus or brokerage business, etc.," Mr. Wallace explained.

For example, excess/surplus brokers have "virtually no conventional markets available to them," said J. Dale Bohm, executive director of the National Assn. of Professional Surplus Lines Offices in Roswell, Ga.

Because of this lack of coverage for wholesalers, NAPSLO is developing a mutual insurance company to provide primary E&O coverage to its policyholders and other U.S. wholesalers (see story, page XX).

Larger agents are having trouble finding coverage because "they have larger accounts that are more likely to sue," Mr. Wallace and others observed.

"Large general agents and specialty firms have a terrible problem finding E&O coverage. Our underwriters don't want them either," Mr. Wallace added.

An agency or brokerage generating more than $70 million in annual premium volume "could have an absolutely clean record and still not find coverage," said Bill G. Jensen, corporate vp for Arthur J. Gallagher & Co. in Rolling Meadows, Ill.

Some agencies employing more than 100 people "are going bare because they can't buy E&O coverage at all, and others are having trouble getting coverage," said Jerry Thompson, senior underwriting officer of professional industry underwriting for St. Paul Fire & Marine Insurance Co.

Overall, "it's safe to say that all major brokers have to scour the marketplace and scramble about" to find adequate E&O coverage, said John A. Bugalla, managing director of Marsh & McLennan Inc., the New York-based brokerage subsidiary of March & McLennan Cos. Inc.

"Even in the '70s, (E&O) coverage was difficult to place for the top 20 brokerages. It has increased in difficulty in the past couple of years because the clients and some of the claims have gotten so large that some markets are overreacting," Mr. Bugalla explained.

He also pointed out that some of the insurers that once wrote brokers E&O coverage have gone out of business, which "has certainly contributed to the problem."

Brokers E&O coverage "has probably been subject to more day-to-day change than any other coverage and is the most limited coverage in the underwriting community," said George E. Corde, executive vp of Frank B. Hall & Co. Inc. of Briarcliff Manor, N.Y.

The top 10 to 20 brokers have been forced to increase their self-insured retentions tenfold in the last two years, said Donald Thomas, executive vp of Crump Cos. Inc. in Memphis, Tenn. "Our premium price has gone up nearly tenfold at the same time, and our limits of coverage are about a fourth of what they used to be."

Observers say the coverage that is obtained usually must be pieced together, because the insurers that will write E&O for big brokers are unwilling to insure large amounts.

But it is difficult to maintain E&O coverage over $25 million by piecing together limits, said Gallagher's Mr. Jensen. "Every time you start to get a complete program together, you start getting letters of intent not to renew."

Officials at some of the top 20 brokerages report that several U.S. insurers have stepped in to provide limited E&O coverage to help brokers through the current market difficulties. However, brokers declined to identify these insurers because the business is being written on an accommodation basis. They also declined to provide specifics on self-insured retentions or ranges of how much coverage they have.

London is participating in the programs written, providing limited amounts of E&O coverage to larger brokers for a premium price, observers say.

"If you are a London broker, you will get more E&O coverage out of the London market than would a U.S. broker. Likewise, the American marketplace will traditionally help out domestic brokers," said Walter S. Tomenson Jr., another M&M managing director.

"If the brokerage is international in scope, it will have access to U.S. and London markets," Mr. Tomenson continued. "Capacity in bits and pieces is (also) coming out of Australia, France, Germany, etc. You just have to know how to use it," he added.

"There has to be a cooperative effort between brokers and their markets. A lot of underwriters on both sides of the ocean recognize that," noted M&M's Mr. Bugalla.

Hall's Mr. Corde agreed, saying that U.S. insurers, using their net line capacity, have "responded to the capacity and coverage needs of major brokers and have delivered as much capacity as London" in the hard market.

"The London market is not anx-

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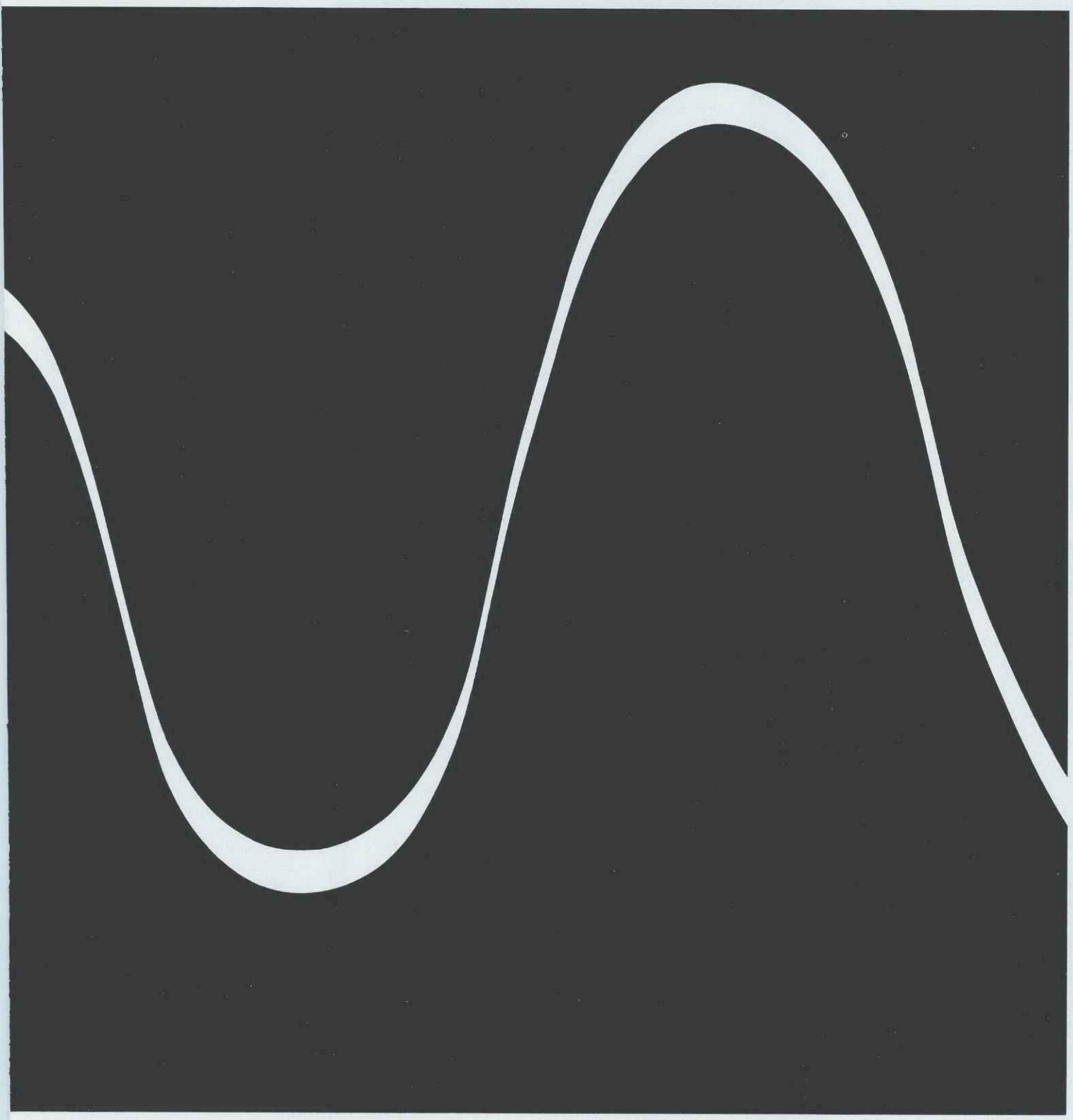

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Agency E&O

Continued from previous page
ious to support this class of business for non-Lloyd's brokers. They have responded, but so have U.S. companies. The U.S. markets have rallied around brokers, both regional and national, to support them at this time," he said.

However, Mr. Corde pointed out that the use of both U.S. and foreign insurers "has only created marginal coverage—not the limits we had enjoyed in the past."

But insurance agents who do not fall into the hard-to-place categories usually can readily find coverage through their national or state agent associations.

The National Assn. of Professional Insurance Agents, based in Alexandria, Va., has offered a national E&O program for 25 years. Chicago-based Shand, Morahan & Co. Inc. has been underwriting manager for its program since 1970.

Since 1966, the PIA's E&O program has been insured by Utica Mutual Insurance Co. of New Hartford, N.Y. Approximately 12,500 agencies now are insured under the program, which should generate slightly less than $45 million in premiums in 1986.

Joe J. Thackaberry, vp of Shand Morahan, said Utica Mutual writes no other agent or broker E&O coverage.

Through the PIA program, agents can obtain claims-made primary coverage limits of up to $2 million per claim/$4 million aggregate, if they meet the insurer's underwriting criteria. No excess coverage is available.

The PIA program is designed to insure mainstream property/casualty agents that do no more than a limited amount of excess/surplus or specialty brokerage business—generally no more than 15-20%—and that are not heavily involved in handling such lines as ocean marine insurance or bonds.

The PIA is now working on a separate program to provide coverage for agencies that generate more than $5 million in annual premium volume. While some of those agencies are insured through the current program, it was not designed for larger agencies, said E&O chairman Mr. Hargrave.

The second program will provide larger agencies with higher limits. Those agencies also would assume higher deductibles. Mr. Hargrave said that the program may include defense costs within limits or also may apply the deductible to defense costs.

"The real need is much higher limits and deductibles. Because of filing requirements, we couldn't do these things under the current program," Mr. Hargrave said. "We hope to have the program in place by January," he added. The insurer has not yet been named.

Shand Morahan also can provide markets for other agents nationwide through Evanston Insurance Co., Evanston, Ill., said James C. Willis, senior professional at Shand Morahan. The insurer withdrew from the market last year but resumed writing agent E&O this September through Shand Morahan, Mr. Willis said.

Evanston insures agencies that run primarily retail operations generating between $10 million and $50 million in annual premium volume, he said. The insurer provides primary coverage limits up to $2 million per claim and aggregate, with no umbrella.

Shand Morahan also can provide coverage for managing general agencies at the same limits, on an individual submission basis. However, Shand Morahan underwrites MGA business extremely carefully, Mr. Willis noted.

The New York-based Independent Insurance Agents of America Inc. has offered a national E&O program to members in 46 states and the District of Columbia since 1984. The remaining four state associations—Texas, Florida, Mississippi and New York—had developed their own programs and chose to stay with them rather than join the national program.

Employers Reinsurance Corp. in Overland Park, Kan., insurer of the IIAA national program, insured 17 IIAA state affiliates before 1984.

While Employers Re provides coverage to other agencies throughout the United States and Canada, the greatest portion of its E&O business is from IIAA-member agencies, said Jerry L. Woolard, a vp and manager of Employers Re's Professional Liability Department.

Employers Re writes claims-made primary limits of up to $5 million per claim and aggregate. Minimum deductibles vary from $1,000 to $25,000, and the insurer will write a $5 million excess policy over another insurer's primary policy, but not over its own.

"Our market thrust is aimed at everyday, Main Street agencies. We don't get involved in writing large brokerage firms," Mr. Woolard said.

"We are interested in agencies generating $20 million or less in annual premium volume. We have insured some larger agencies, but probably 90% of our business is with agencies generating $15 million in annual premiums or less."

Representatives of all agencies insured by Employers Re are required to attend seminars approved by the insurer on the new Insurance Services Office commercial general liability forms, Mr. Woolard said.

And, under the IIAA's program, in states where E&O "losses have been significant, we require attendance" by all licensed personnel at E&O loss control seminars in addition to the CGL seminars, Mr. Woolard added.

The IIAA program currently insures 12,000 agencies and generates more than $25 million in annual premiums, according to Eric G. Gustafson, chairman of the IIAA's E&O committee and chairman of Blake Insurance Agency Inc. in Portsmouth, N.H.

Mr. Gustafson said that the IIAA is developing a secondary market for agencies that "are too large or whose mix of business doesn't fit the program" because they are writing specialty or difficult lines. The secondary program, which the IIAA hopes to have available sometime in 1987, "should provide similar limits to the primary program," he said.

In addition, the association is working with Employers Re to develop an excess layer of coverage of $5 million excess of $5 million by early in 1987. The association expects the excess program will be wholly reinsured by a group of companies on a quota share basis.

IIAA state affiliates in Texas and Florida have developed E&O programs insured through subsidiaries of Morristown, N.J.-based Crum & Forster Insurance Cos.

The Texas association is insured by U.S. Fire Insurance Co. through underwriting manager Floyd West & Co. in Dallas. According to Robert L. Cramer, director of insurance programs for the IIA of Texas, there is no formal group program, but coverage is placed as a member benefit on an individual submission basis.

Two types of coverage are available: Agencies that meet the underwriting guidelines can obtain $300,000 per claim/$900,000 aggregate primary limits, with a $2 million commercial umbrella including excess E&O coverage. Without the umbrella, agents can obtain up to $1 million per claim/$3 million aggregate coverage.

Continued on page 32

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Agency E&O

Continued from page 30

Agencies with more than six employees are required to assume a $5,000 deductible.

The association currently has about 1,650 E&O primary policies in force and between 600 and 700 excess umbrellas. The combined annual premium is between $8 million and $10 million, Mr. Cramer explained. There are no specific agency size restrictions.

The IIAA's Florida affiliate, the FAIA, offers an E&O program underwritten by Crum & Forster's International Surplus Lines Insurance Co. and managed by The London Agency Inc. in Atlanta.

Limits available are $500,000 per claim/$1 million aggregate, said Linda Pate, the FAIA's director of insurance programs. An umbrella of up to $2 million can be written for new policyholders, while those renewing can obtain higher limits.

About 90% of the policyholders have a participatory deductible of 20% per claim up to a maximum of $5,000, but flat deductibles also are available, Ms. Pate said. The FAIA program insures about 1,000 agencies and generates more than $4 million in annual premium.

Crum & Forster also is a market for agents outside the two IIAA state affiliates through Crum & Forster Managers Corp. (Ill.) in Chicago, according to James D. Knupp, assistant vp.

Crum & Forster is accepting applications nationwide with a maximum $1 million per claim and aggregate limit. No umbrella or excess coverage is available and deductibles vary.

He said national brokerages "would probably be precluded because of size," but there is no formal size cutoff. Mr. Knupp said Crum & Forster's share of the agent E&O market is "quite small" and probably will remain at its current level in 1987.

The remaining two state IIAA affiliate programs, Mississippi and New York, are insured by the Fireman's Fund Insurance Cos. in Novato, Calif.

The Mississippi association has about 160 program participants and is expected to generate about $600,000 in premiums in 1986. The New York association has about 1,500 program participants and will generate about $8 million in premiums in 1986.

Fireman's Fund also is a market for California agents and insures an E&O program sponsored by the Western Assn. of Insurance Brokers in San Francisco. WAIB has about 400 members insured under the program, which will generate about $7 million in premium volume in 1986, said Mike Cabot, WAIB executive director.

The claims-made E&O policies issued through Fireman's Fund are designed for pure property/casualty agencies generating less than $12 million in annual premium volume and writing no excess/surplus business, explained Patrick W. McBride, vp and head of Fireman's Fund's commercial group department.

Limits available and underwriting guidelines are the same for all three associations and for California agents, Mr. McBride said.

Primary limits of $1 million per claim/$1.5 million aggregate are available with a $5 million umbrella policy above the primary limits. Minimum deductibles range from $1,000 to $25,000, depending upon the agency's size. Fireman's Fund plans to increase capacity in 1987 and possibly to expand its non-association writings outside of California, Mr. McBride said.

SAFECO Insurance Cos. in Seattle is a market for agents nationwide through underwriting managers E&O Professionals Inc. in Kansas City, Mo., said Mr. Wallace of E&O Professionals.

SAFECO, through its SAFEPRO Program, is writing claims-made primary coverage limits of up to $3 million per claim and in the aggregate—including prior acts coverage—for agents in all states except New Jersey and Wyoming because of current rate regulations, Mr. Wallace said.

"We are looking for the Main Street independent agent writing less than $20 million in annual premium volume," he said. The program is "not looking for agents who are heavily into surplus lines or (specialty) brokerage business, because they face more of a bankruptcy exposure."

In 1986, SAFEPRO will generate in excess of $15 million in premiums and will write more than 3,000 policies, Mr. Wallace said. "We're working on programs to increase our limits or to provide an excess or umbrella policy."

Mr. Wallace said SAFECO has

Continued on page 34

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65	523

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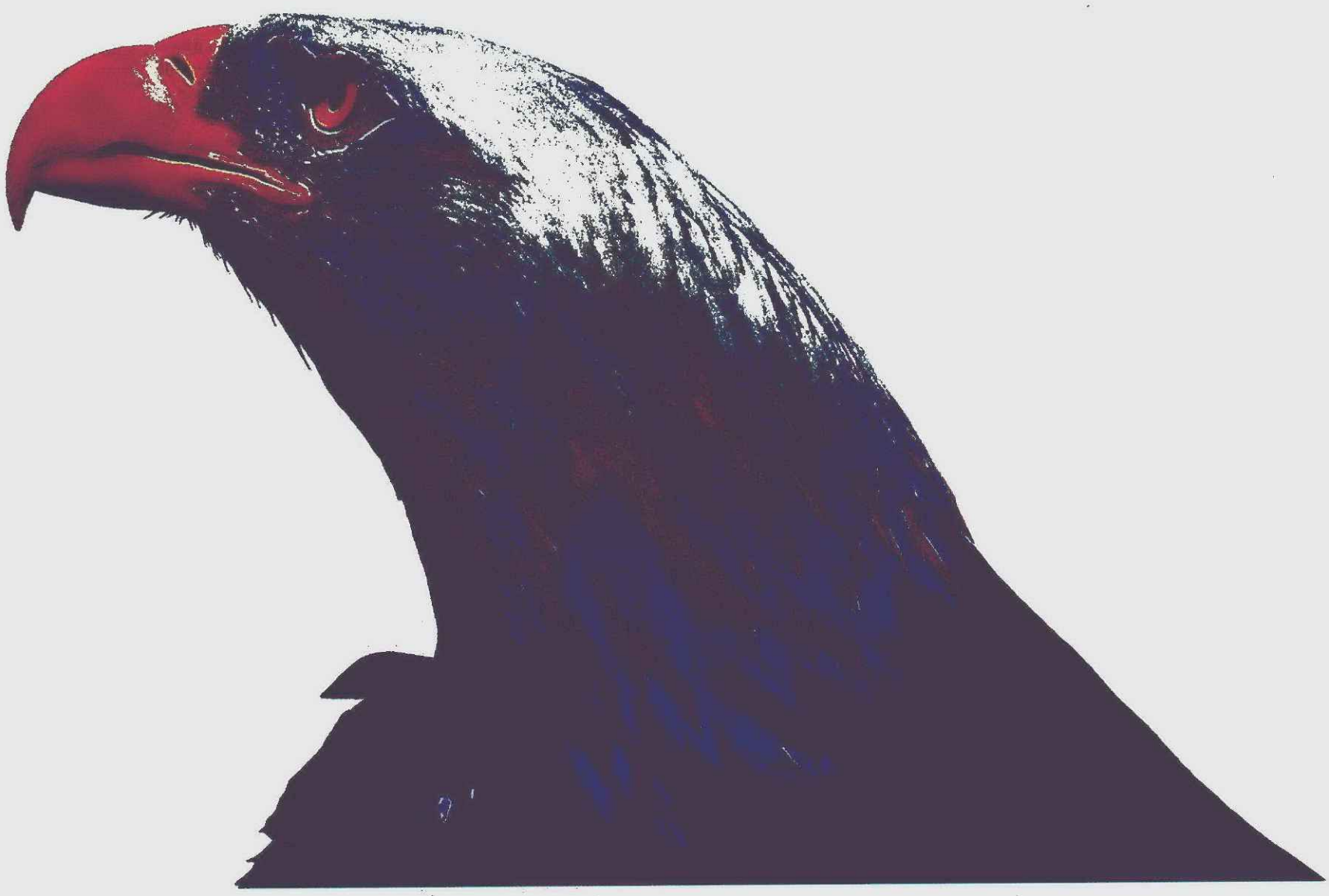

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Agency E&O

Continued from page 32

set no capacity restrictions on business written through the program. The combined loss ratio on the book of business, including incurred-but-not-reported losses, is running around 68% or 69%.

American International Group Inc. in New York is a "major factor in the E&O marketplace right now, especially for the midsized agency that generates from $20 million to $50 million in annual premium volume," said a company spokesman. Coverage is written through AIG subsidiaries National Union Fire Insurance Co. of Pittsburgh, Pa., and American Home Assurance Co. in New York.

The insurer can write claims-made primary levels of $2 million per claim and aggregate, or umbrella coverage of $5 million excess of $5 million, although it probably would not write excess over its own primary policy, the spokesman said.

"We are not really a market for the alphabet houses, but there is no definitive size cutoff" for coverage eligibility, he said. And AIG is not a market for wholesale brokers or agents who place a lot of excess/surplus business.

The spokesman said AIG has been a continuous market for agent E&O coverage for two decades and is accepting new and renewal applications.

St. Paul Fire & Marine Insurance Co. in St. Paul, Minn., is providing a market for agents' E&O coverage, except in New York City, California, Alaska, Hawaii, Pennsylvania, Delaware, Florida and Nevada. St. Paul is not accepting any new applications in Texas and New Hampshire, and is not accepting new applications in South Carolina, South Dakota, Massachusetts or Kansas pending approval of rate filings.

St. Paul provides primary claims-made coverage limits up to $5 million per claim and aggregate. Jerry Thompson, senior underwriting officer of professional industry underwriting, said its reinsurance department is "currently working on arrangements to make higher limits available."

"We allow incidental excess/surplus lines exposures for agents dealing with E&S brokers. We will generally not insure pure E&S brokers, although there may be one or two exceptions based on unusually close, long-term relationships," Mr. Thompson said.

St. Paul is generally not a market for managing general agencies or major brokers who operate only with broker licenses, Mr. Thompson said. It usually requires policyholders to assume substantial deductibles because "we want insureds to be as heavily involved in their E&O risk as they can prudently participate."

St. Paul requires all licensed personnel of every policyholder to attend a mandatory one-day training seminar dealing with the new commercial general liability forms and E&O loss control, held at St. Paul branch offices. And, trained St. Paul loss control analysts visit E&O insureds periodically and evaluate their operations, he said.

St. Paul insures fewer than 2,000 agencies and will write about $15 million in agents E&O coverage this year. St. Paul also insures some of the 80 largest agencies in the United States who are members of the St. Paul's Top Brass agents' affinity group.

The Berkshire Hathaway Insurance Group in Omaha, Neb., will accept submissions from insurance brokerages, although it has not yet written E&O coverage for a property/casualty brokerage, said Ajit Jain, president of the group's special large risks division.

The division "is welcoming new applications," Mr. Jain said, explaining that it has written more than $150 million in premiums since opening for business 15 months ago. "We have our clients name the premium they are willing to pay," then the two parties may negotiate an alternative premium.

The insurer is willing to negotiate primary or excess policies on a claims-made or occurrence basis, or on manuscripted forms, he said. "Of course, an occurrence policy would have to be priced accordingly," Mr. Jain said.

"We keep all of the risk ourselves instead of laying it off to reinsurers. Reinsurers tend to put constraints on these firms," he added.

"We have the flexibility to sit across the table from clients and have them tell us what coverage they need," Mr. Jain said. Various group members issue policies.

And Des Plaines, Ill.-based wholesale brokers Professional Liability Brokers & Consultants Inc. has markets for agent or broker E&O coverage through National Union, Employers Re and underwriters at Lloyd's of London, said president Larry Farano, adding that coverage must be placed on an individual submission basis to the markets.

Mr. Farano said that he has been able to obtain primary and excess coverage limits through more than one source totaling $10 million or more for agents not involved in excess/surplus or managing general agents activities, and has successfully placed lower limits of primary coverage for the latter. ■

Markets writing agent, broker E&O

Agents and brokers seeking a market for professional liability coverage may be able to find help from:

- Members of the National Assn. of Professional Insurance Agents or the Independent Insurance Agents of America Inc. can contact their state associations.
- Members of the Western Assn. of Insurance Brokers and California agents can contact: John Choe, commercial group manager, Fireman's Fund Insurance Co., P.O. Box 3136, San Francisco, Calif., 94119; 415-777-9900.
- Shand, Morahan & Co. Inc. Contact James C. Willis, Doug Sanders or Kathy Cook, Shand Morahan Plaza, Evanston, Ill., 60201; 312-866-2800.
- Employers Reinsurance Corp. Contact: Jerry L. Woolard, P.O. Box 2991, Overland Park, Kan., 66201; 913-676-5316; or, Employers Re branch offices in Chicago, New York, Columbus, Ohio, San Francisco, Atlanta, Boston, Houston or Toronto.
- Crum & Forster Managers Corp. (Ill.). Contact James D. Knupp, assistant vp, 200 S. Wacker Drive, Sixth Floor, Chicago, Ill., 60606; 312-993-6300.
- E&O Professionals Inc. Contact James D. Wallace, president, 1001 East 101st Terrace, Suite 300, Kansas City, Mo., 64131; 1-800-243-6836.
- American International Group, professional liability division, 70 Pine St., New York, N.Y., 10270; 212-770-6627.
- St. Paul Fire & Marine Insurance Co. Contact Tim Plunkett, marketing director, professional industry underwriting, P.O. Box 43271, St. Paul, Minn., 55164; 612-228-5834.
- Berkshire Hathaway Insurance Group. Contact Ajit Jain, president, special large risks division, 3024 Harney St., Omaha, Neb., 68131; 402-346-7400.
- Professional Liability Brokers & Consultants Inc. Contact Larry Farano, president, or Erv Kranberg, corporate secretary, 1011 E. Touhy, Des Plaines, Ill., 60018; 312-699-4151. ■

KNOWLED

Three producer E&O facilities in the works

By LINDA J. COLLINS

Three claims-made facilities currently under development could bring relief to many brokers, large agencies and wholesalers struggling to find errors and omissions coverage.

Assurex International, an agent-owned insurance and financial services organization based in Chevy Chase, Md., and the National Assn. of Casualty & Surety Agents are developing a captive—Professional Agencies Reinsurance Ltd., or PAR Ltd.—for large agencies that have trouble finding E&O coverage through other trade associations.

The captive should be operational by Dec. 31, said Robert P. Ashlock, president of Columbus, Ohio-based Assurex.

"We think there may be 800 to 1,000 agencies who meet our criteria size-wise, and we have received many calls from agents interested in participating in the facility," he said.

While the associations had planned to domicile the captive in the Cayman Islands, "with the new tax bill, we are now looking at domestic domiciles as well," Mr. Ashlock explained.

The facility, which will be capitalized by its policyholders, will insure only those agencies or brokerages that take in more than $1.5 million to $2 million in annual commission and fee revenues. It also will exclude major alphabet houses and publicly held brokers.

The captive is not intended to reduce E&O premiums, Mr. Ashlock warns. "Rates will be on the high side, because the major objective is to create capacity and underwriting stability, not to reduce rates. This is definitely a long-term facility. . .to create a long-term solution for agents from the point of view of insurance."

Agents and brokers "will have to agree to buy stock in the captive to become an insured, but that is not a guarantee of insurance. They will still have to meet the underwriting guidelines," Mr. Ashlock said, adding that the minimum participation cost has not yet been established.

American Risk Management Inc. of Fort Lee, N.J., will manage the captive, and Mr. Ashlock will oversee management.

Participation in a quality control program will be mandatory. Policyholders will be required to "appoint a quality control coordinator within their agency, and that coordinator must attend a quality control seminar within 90 days of joining," Mr. Ashlock explained. The coordinator then will conduct an internal quality control seminar within 90 days after the seminar.

Policyholders will be required to assume a per-occurrence retention of approximately $50,000, which will be followed by a layer of coverage funded by the policyholder-owned captive and fronted by a major insurer.

"Fireman's Fund has indicated an interest in fronting underwriting and handling claims" for the facility, Mr. Ashlock said, adding that the insurer also would be an equity owner. "It will purchase about 20% of the equity in the captive," he added.

A spokesman for Fireman's Fund Insurance Co. confirmed Mr. Ashlock's statements, but declined additional comment.

"Between 10 and 15 insurers have indicated their willingness to participate in a pool" to provide an excess layer of coverage with limits of up to $5 million, he said.

The National Assn. of Professional Surplus Lines Offices has announced that it is helping members form a mutual insurance company to provide primary E&O coverage of $1 million per claim and aggregate to wholesale brokerage firms. The mutual will be policyholder-owned. NAPSLO membership is not required.

Plans originally called for the mutual to be based in Bermuda. Because of pending tax changes, "We are in the process of reviewing the advantages and disadvantages of forming a company in Bermuda versus forming a company in Vermont under the Risk Retention Act," said outgoing NAPSLO President Jeremy D. Cooke, president of Major Surplus Inc. in New York.

Policyholders will be required to pay a surcharge on their first year's premium —tentatively set at 20%—to establish a loss fund. Mr. Cooke said 100 policyholders are needed to get the facility up and running, but there is no limit to the number of participants.

"We expect 200 to 250 participants in the first year, and we have every indication that that will be the case," Mr. Cooke said.

The mutual, tentatively named Wholesalers Mutual Indemnity Insurance Co., should be open by Jan. 1, 1987, Mr. Cooke said. It will likely be managed by Bermuda Fire & Marine Insurance Co., which will form a subsidiary in Vermont if the insurer is domiciled in that state.

After the mutual has a chance to compile statistics on its loss data, it would be a "natural progression" to develop a layer of excess coverage, he said.

The minimum annual premium for participation in the mutual has been set at $15,000. NAPSLO is trying to arrange retroactive coverage back to January 1986—for an additional cost—for participants who remained uninsured during that period of time.

Marsh & McLennan Cos. Inc. and Morgan Guaranty Trust Co.'s organization of an offshore insurance facility to provide excess professional liability coverage has been temporarily sidelined (*BI*, July 7).

The captive was being formed to provide limits of $50 million excess of $50 million to insurance brokers, accountants, lawyers and other professionals. And, if policyholders were not successful in arranging $50 million in underlying coverage, plans called for the captive to match the underlying coverage, with a minimum attachment point of $20 million.

Walter S. Tomenson Jr., a Marsh & McLennan Inc. managing director, said that plans that called for the insurer—Associated Professions Excess Insurance Co. Ltd., or APEX—to be domiciled in Barbados are being re-evaluated because of the new tax bill, under which individual partners in a firm could be liable for some of the taxes on profits from an offshore captive. The captive might generate profits during the first few years of operation because of the long-tail nature of professional liability exposures, Mr. Tomenson said.

However, the facility is expected to be operational by April 1, 1987, though the domicile may change. ■

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Rates increase, limits drop for lawyer liability coverage

By MEG FLETCHER

Lawyers liability insurance rates are rising from 10% to 300% this year, when the coverage is available.

Increasing claims, the high cost of defending claims against attorneys and a lack of reinsurance are keeping rates high. In addition, available limits continue to shrink and coverage is restricted—especially by including defense costs within policy limits, most insurers say.

Although some commercial insurers say future rate increases will be more moderate, a few predict stiff rate hikes as claims mount and reinsurance remains hard to find, especially for insuring large law firms.

While large law firms are hardest hit in this tight market, insurers generally are tightening underwriting guidelines and weeding out applicants if they do too much work in high-risk areas such as securities and sometimes plaintiff personal injury or entertainment-related cases.

A few insurers also have reduced limits or stopped insuring lawyers in areas such as California and New York City, which are perceived as loss-prone.

Attorneys in most law firms are concerned because partners are usually considered jointly and severally liable for judgments under the Uniform Partnership Act which most states have adopted, explained Edward Zulkey, a partner with the Chicago-based firm of Baker & McKenzie.

Forming corporations does not reduce an attorney's legal liability.

In response, law firms are clamoring to join existing captive insurers and are forming new captives to insure their professional liability risks.

Law firms also are discovering risk management.

"The market is abysmal in California and dismal elsewhere," said Ronald E. Mallen, an attorney with Long & Levitt in San Francisco. One out of every three lawyers in California has no insurance, half of them because it was not available at any price, according to Mr. Mallen, who has authored several articles and books on the topic and has been active in the American Bar Assn.'s professional liability projects.

"There is a real need for capacity and somewhat reasonable pricing," said Walter S. Tomenson Jr., a managing director and chairman of the financial and professional service industry practice of New York-based Marsh & McLennan Inc., the brokerage subsidiary of Marsh & McLennan Cos. Inc.

"It's a market very much in transition," Mr. Tomenson said. "It is playing catch-up, if there is any market at all."

Large law firms, those with 40 or more attorneys, are hardest hit by lowered limits and reduced availability.

"Over the last 12 months the market for large law firms has been very restrictive," said Stuart Pattison, managing director of Montreal-based Minet International Professional Indemnity Ltd. Minet brokers coverage for about 150 law firms with more than 100 lawyers each.

Small law firms, especially those outside of California, are faring better because they seek lower limits of coverage which are more available through commercial insurers directly or through the growing number of alternative programs.

However, as bad as the market is for lawyers, other professionals who provide advice, such as accountants, are faced with more radical market changes than are lawyers, said John T. Sinnott, M&M executive vp (see story, page 42).

Most large law firms have not had the claims experience of other advice professionals because the large firms do a good job of practicing their profession, Mr. Tomenson said.

However, many industry spokesmen disagree.

The crisis in lawyers liability insurance is being driven by a surge of more severe and more frequent claims against them, insurers say.

Continued on next page

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Continued from previous page

"It's not a crisis in insurance, but a crisis in losses," said Jerry Thompson, senior underwriting officer for professional industry underwriting for St. Paul Fire & Marine Insurance Co. in St. Paul, Minn.

"The legal profession is now facing a malpractice crisis," said Duke Nordlinger Stern, a risk management consultant in St. Petersburg, Fla., who advises about a dozen bar groups. Estimates from insurers and other sources "indicate that the frequency of claims has increased over the past four years from approximately three to more than nine per 100 insured lawyers per year," he said.

An ABA study of 29,227 claims asserted against lawyers from 1983 through 1985 found that the errors most often alleged were:

- Substantive—44%. Substantive errors include failure to know or properly apply the law, inadequate discovery of facts or inadequate investigation and error in choice of procedures.
- Administrative—26%. Administrative errors included failure to schedule court and filing dates properly, procrastination in performance or lack of follow-up, and failure to file documents.
- Client-related—16%. Client-related errors include failure to obtain the client's consent or to inform the client and failure to follow client's instructions.
- Intentional—12%. Intentional errors include fraud and malicious prosecution or abuse of process.

While the same study found that most claims are settled without litigation and without payment to the plaintiff, "The dollars paid out for lawyers' acts, errors and omissions has also risen substantially," according to Mr. Stern. "Over the same period, the average loss payment through judgment or settlement has climbed from $3,000 to more than $30,000. When the cost of defense is added, the average claims where a payment is made exceeds $45,000," he said, citing data collected from insurers and other industry observers.

While there have been very few major judgments entered against law firms to date, there are more than 12 claims outstanding for which insurers have set aside millions of dollars in reserves, one observer said on the condition of anonymity.

Insurers reporting 1985 results under the California Legal Malpractice Reporting Act collected $75 million in written premium from 40,000 lawyers and reported losses of $180 million for a loss ratio of 312%, according to the Lawyers' Mutual Insurance Co., a Burbank, Calif.-based lawyers mutual.

"The severity on this book of business has changed dramatically" for the worse, said a spokesman for New York City-based American International Group Inc. AIG probably receives the most premium volume from lawyers of any insurance group, the spokesman said, although he declined to provide details.

Lawyers liability insurance is underwritten nationwide by AIG units National Union Fire Insurance Co. of Pittsburgh, Pa. and American Home Assurance Co., both based in New York City.

"Today the potential for significant claims is there and it is very very real," the AIG spokesman said. "This class of business has become extremely volatile" in the past two years, and that change is like night and day compared with what it was five years ago, he said. "It's as dramatic as the rate increases," he said.

Large firms of 40 or more attorneys face the risk of severe claims, while smaller firms, which include 90% of all lawyers, run the risk of frequent but less severe claims, Mr. Stern said.

And, for every dollar paid out for indemnity costs, add an additional 90 cents for defense, the AIG spokesman said.

Defense costs account for about 50% of losses on lawyers E&O insurance at Home Insurance Co. of Indiana, which is owned by The Home Insurance Co. of New York City, said Vp Robert M. Parker.

The Home insures 100,000 individual policyholders in nearly 40 states, Mr. Parker noted, making it the largest insurer of lawyers in numbers, although not premium volume.

Losses on lawyers E&O policies have not been worse in the past because the idea of actually suing lawyers and being successful in it is probably just catching on now, M&M's Mr. Tomenson said.

It used to be that lawyers were sued only for mistakes—missing

Continued on next page

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Lawyer liability

Continued from previous page
filing deadlines, for example—rather than for errors of judgment, Mr. Zulkey of Baker & McKenzie said.

"Under evolving law, if one expert expresses an opinion that the defendant exercise of poor judgment deviated from the standard of care, that constitutes a fact question for a jury," he said.

Rather than black and white issues, courts are dealing with grey areas. "Grey creates uncertainties in the law and creates uncertainties in the insurance business," he said.

There is also the feeling now that juries may not be sympathetic to defendants who are lawyers, said Mr. Zulkey.

St. Paul cites the growing number of lawyers and their willingness to sue other lawyers, an expansion in consumer awareness about lawyers' professional responsibilities, high consumer expectations, the increasing complexity of nearly all legal cases and the general absence of constructive loss prevention activities among lawyers as reasons for insurers' reluctance to write E&O insurance for lawyers.

Jeffrey M. Smith, chair of the ABA's Standing Committee on lawyers professional liability and a partner in the Atlanta law firm of Arnall Golden & Gregory, points out lawyers also face a new legal exposure: Lawsuits based on the Racketeer Influenced and Corrupt Organizations Act (*BI*, July 8, 1985; Aug. 5, 1985).

When a lawyer faces RICO charges in addition to other charges, the lawyer's E&O insurer will usually provide a defense, but generally reserves the right not to pay a judgment or settlement of the RICO-related charges. When RICO is the only charge, insurers often won't provide a defense, Mr. Smith said.

As a result of these losses and exposures, rates are climbing.

AIG law firm policyholders saw rates increase less than 100% this year, but more than 600% since July of 1983, the AIG spokesman said. AIG companies raised rates after poor loss experience jolted the combined ratio for the line up to 190% at one point. "It's been very, very unprofitable over the past three years," said the AIG spokesman.

However, those rate increases must be put in the context of the market from 1977 to 1983 when rates dropped and the product was underpriced, the spokesman said.

The average rate nationwide is now about $2,500 to $3,500 in premium for every $1 million in cover, said Home's Mr. Parker. However, the rate per $1 million in coverage ranges from $900 in Mississippi to $9,000 in California, he said.

While the range of rate increases varies, a 100% rate increase for a law firm with no claims is on the low side, M&M's Mr. Tomenson said.

Ritch Kropp, senior vp at Shand, Morahan & Co., an underwriting manager in Evanston, Ill., said rate increases for this year ranged from 50% to 300%. Shand underwrites on behalf of affiliated insurer The Evanston Insurance Co.

Yet St. Paul, which last year increased rates 120%, is now requiring policyholders to pay an average 35% rate increase this year, Mr. Thompson said.

Small firms seeking limits of $100,000 per claim/$300,000 annual aggregate now pay $1,500 to $1,600 per attorney rather than $200 per attorney just three years ago in states with average risk profiles, said consultant Mr. Stern.

The future of rate increases is uncertain.

Optimistic predictions include Home's Mr. Parker, who said, "I think we have reached the correct rate for lawyers professional liability insurance."

Lawyer Mr. Smith predicts a substantial moderation in the pace of rate increases in 1987 with 5% to 20% increases for firms who have already had 200% to 400% increases in the past.

St Paul's Mr. Thompson predicts 25% to 30% rate increases

However, pessimists include lawyer Mr. Mallen, who said, "I see it as a long siege." He predicted moderate pricing and greater availability will come to California no earlier than 1989 while other states may see some in 1988.

And Minet's Mr. Pattison predicted that next year existing capacity for large law firms "will shrink noticeably," although that may be modified by any newly created capacity from facilities like mutuals. In addition, underwriters will be looking for significant rate increases from most law firms, he predicts.

Limits, meanwhile, are shrinking.

"Most major law firms are not getting the level of coverage they would like," said Mr. Zulkey.

A law firm with good historical connections to the London markets may be able to get as much as $50 million, but two years ago, it could have purchased $200 million, said M&M's Mr. Tomenson.

Minet's Mr. Pattison said a large firm could probably buy only $20 million to $25 million in limits as a new client in the market, while renewal clients can get substantially higher limits.

St. Paul last year could arrange for $20 million limits with facultative reinsurance, but that has been halved this year, Mr. Thompson said.

AIG, which says its companies probably generate the most in premium volume, offers limits nationwide ranging from $100,000 per claim and $300,000 annual aggregate to $15 million per claim and aggregate. And, it may be possible to arrange for $20 million in limits on a facultative basis, a spokesman said.

Home Insurance Indiana offers most firms of up to 100 lawyers limits of $5 million per claim and aggregate. However, California firms are limited to 25 lawyers and offered limits of only $1 million per claim and annual aggregate.

St. Paul offers limits of up to $5 million per claim and aggregate but can arrange for up to $10 million with facultative reinsurance support. However, it will not accept new business from lawyers doing securities work, unless they are located in Kansas where the insurer participates in a bar-affiliated program. And, while accepting business in 30 states, it is not in the four where its rate filings are pending—West Virginia, Oklahoma, North Dakota and South Dakota.

Chicago-based CNA Insurance Cos. is offering limits ranging from $100,000 per claim and $300,000 annual aggregate to $5 million per claim and aggregate to lawyers who do not practice high-risk specialities.

Shand, Morahan and Chicago-based underwriting manager Crum & Forster Managers Corp. (Ill.) each offer limits of $3 million per claim and aggregate down from $5 million last year.

Limits offered by the state bar-sponsored programs, which are underwritten by commercial insurers, typically stop at $5 million, although some go higher. As a result, they serve mostly small to medium-sized firms, said Al Skakis, executive vp and secretary of the Ohio Bar Liability Insurance Co. and chairman of the National Assn. of Bar-Related Insurance Cos.

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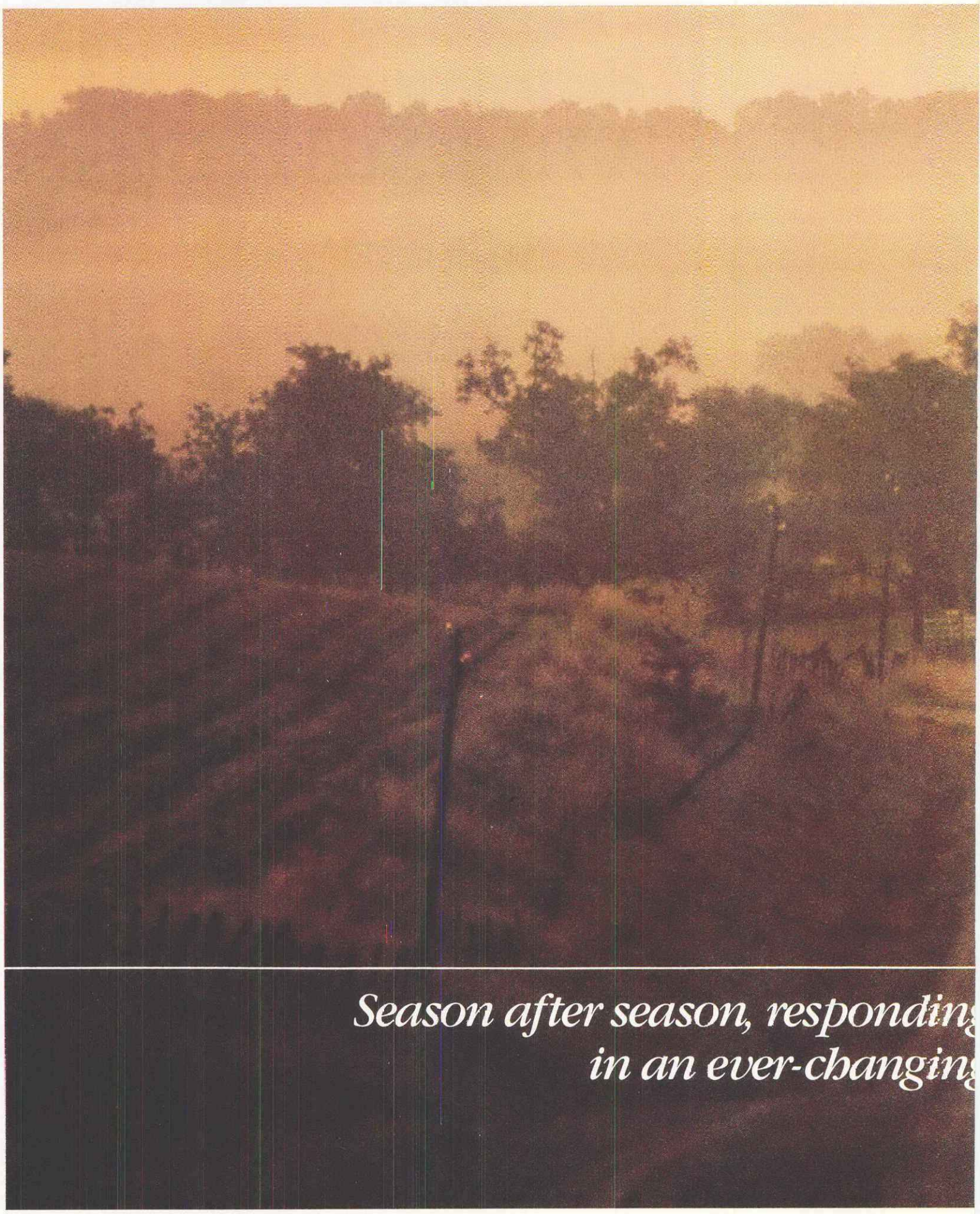

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Markets providing cover available to accountants

Accountants seeking a market for professional liability coverage may be able to find help from:

- American International Group Inc. Contact the Lawyers and Accountants Professional Liability Division of National Union Fire Insurance Co. of Pittsburgh, Pa., 70 Pine St., New York, N.Y. 10270; 212-770-6623.
- The National Society of Public Accountants. Contact Herbert H. Landy Insurance Agency Inc., 75 Second Ave., Suite 410, Needham, Mass. 02194-2876; 617-449-7711.
- The American Institute of Certified Public Accountants. Contact Rollins Burdick Hunter of New York Inc., 605 Third Ave., New York, N.Y. 10058. From outside New York, call 800-221-3023. In New York, contact RBH's Accountants Professional Liability Department at 212-661-9000.
- CAL Accountants Mutual Insurance Co. Contact Fred S. James & Co. of California, 505 Sansone St., San Francisco, Calif. 94111; 415-983-5600.
- Classic Underwriting Services Inc., only for coverage excess of at least $750,000, 175 W. Jackson Blvd., Suite 631, Chicago, Ill. 60604; 312-922-7966.
- Associated International Insurance Co., only for coverage excess of at least $500,000, 3450 Wilshire Blvd., Suite 800, Los Angeles, Calif. 90010; 213-739-8840.
- Admiral Insurance Co. Contact local broker or agent, or Professional Liability Brokers & Consultants Inc., 1011 E. Touhy, Suite 321, Des Plaines, Ill. 60018; 312-699-4151.
- Accountants Liability Assurance Co. Contact Howard Stone at Altschuler, Melvoin & Glasser, 30 S. Wacker Drive, Suite 2600, Chicago, Ill. 60606; 312-207-2800.
- Professionals Prototype I Insurance Co. Ltd. Contact either Norm Smith, 550 California St., Suite 1130, San Francisco, Calif. 94104, 415-981-8200, or Capital Workshop International Services Ltd., Hibiscus Square, Grand Turk, British West Indies; 809-946-2616 or 809-946-2661.
- Professional Liability Underwriting Managers Inc. Contact local broker, state accountants societies, or Robert M. Parter at The Home Insurance Co. of Indiana, 59 Maiden Lane, New York, N.Y., 10038; 212-530-6324.

Confusion marks issue of accountants' liability

By DAVE LENCKUS

Accountants' liability for negligence to third parties could expand, but it has been narrowed in some states.

Attorneys for accountants say they fear that rulings by state courts earlier this year may lead judges nationwide to broadly extend accountants' liability for negligence to third parties.

The potential for what accountants say is a dangerous precedent exists because case law in 25 states has not addressed accountants' liability for negligence to third parties, according to the American Institute of Certified Public Accountants.

And, the Tax Reform Act of 1986, which has been passed by Congress and is awaiting President Reagan's signature, could create additional liability troubles for accountants, according to attorneys.

However, an Arkansas court this year reaffirmed that state's case law, which holds an accountant liable for negligence only to a client.

And, the Illinois Certified Public Accountants Society in August won its battle to enact state legislation that limits an accountant's liability for negligence to clients and only certain third parties.

At issue is the privity of contract doctrine. Accountants argue that only parties that have a privity of contract relationship—a direct contractual relationship to the accountant—should be able to sue the accountant for negligence.

But courts in California (*BI*, March 3) and North Carolina this year ruled that negligence suits can be brought by any third party the accountant could have reasonably foreseen would rely on financial statements audited or reported on by the accountant.

And, case law establishing that foreseeability test previously had been adopted in New Jersey, Oklahoma and Wisconsin, according to the New York firm of Willkie Farr & Gallagher, legal counsel to the AICPA.

"Everything is foreseeable—that's the problem with that test," complained an official of Big Eight accounting firm Arthur Andersen & Co. of Chicago. "Foreseeable means basically anybody," said the official, who asked not to be identified.

Arthur Andersen was the successful defendant against Credit Alliance Corp. in a case last year in which the New York Court of Appeals reaffirmed the longstanding privity doctrine established in *Ultramares vs. Touche* (*BI*, July 29, 1985). The Ultramares decision, handed down by the court in 1931, has been followed by a majority of states, according to attorneys for accountants.

In addition, the privity doctrine is established by either case law or legislation in seven states: New York, Illinois, Arkansas, Colorado, Florida, Kansas and Pennsylvania.

Given that precedent, the foreseeability test established by the California and North Carolina courts this year disturbs attorneys for accountants. "There is concern about the erosion of the privity rule creating much greater exposure for accounting firms," noted Deborah Cooper, an attorney with Willkie Farr & Gallagher.

Ms. Cooper also pointed out that the California appellate court did not refer to the Credit Alliance Case in its case, *International Mortgage Co. v. John P. Butler Accountancy Corp.*, and the California Supreme Court has refused to review the case.

"That was one of the reasons why we thought the higher court should look at it again. The court just chose not to refer to it. We found that very disturbing, very unsatisfactory," Ms. Cooper said.

The case has been remanded to a lower court for trial.

The North Carolina Court of Appeals in *Raritan River Steel Co. & Sidbec-Dosco Inc. v. Cherry, Bekaert & Holland* "apparently didn't refer to Credit Alliance either," Ms. Cooper noted.

However, the Supreme Court of North Carolina is reviewing the case, and Willkie Farr & Gallagher has filed an amicus curiae brief on behalf of the AICPA.

Continued on next page

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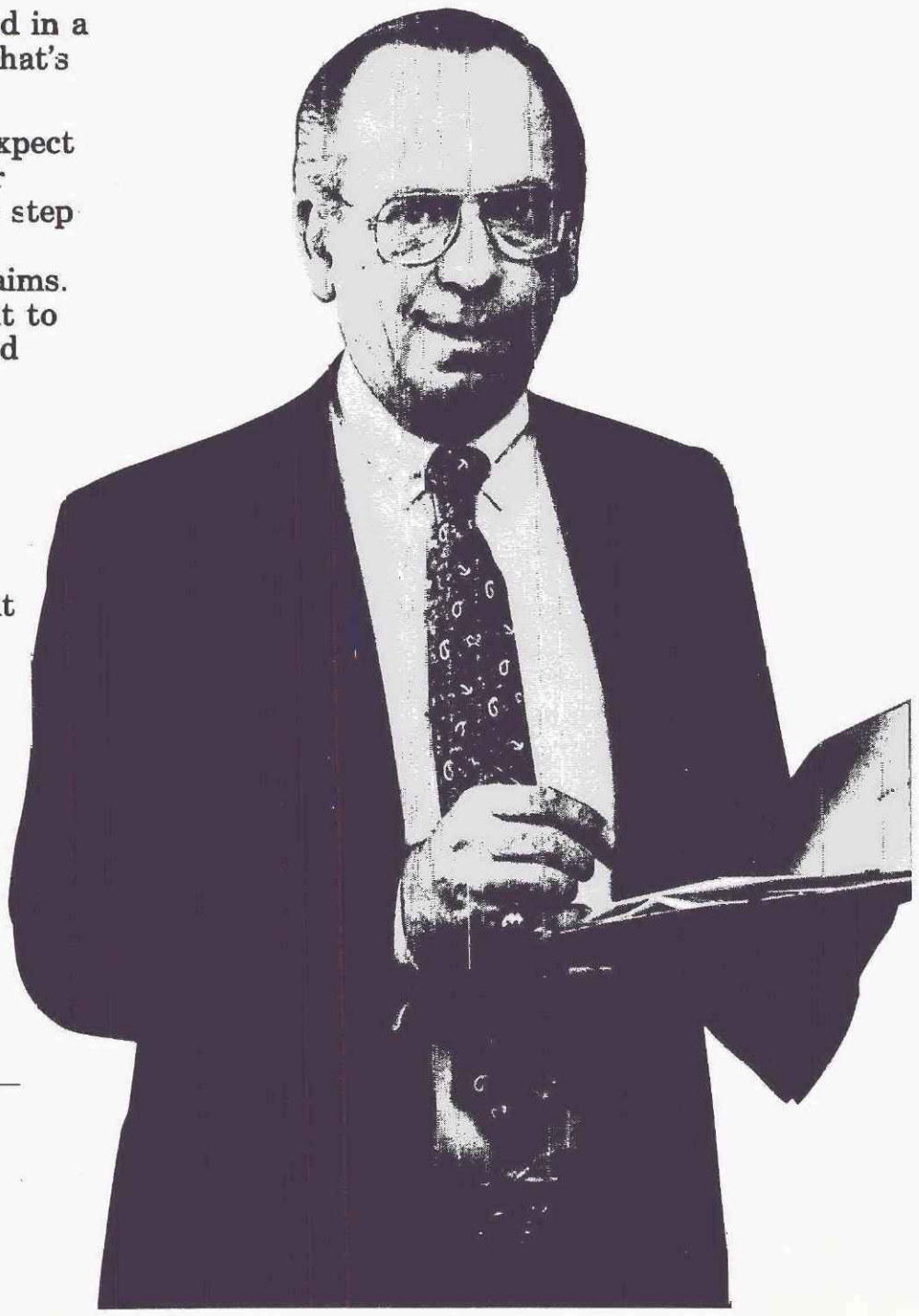

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Another approach, known as the restatement rule, splits the difference between the foreseeability test and the privity doctrine. The restatement rule establishes that for an accountant to be held liable for negligence to a third party, the accountant must know that the party will rely on a client's financial statements.

"The problem we have is that it's too ambiguous as to what it really means," Ms. Cooper said, referring to the restatement rule. "But, it's certainly preferable to foreseeable plaintiffs," under which the accountant may be held liable to unknown as well as known third parties, she added.

The restatement rule has been established by case law in 13 states between 1968 and 1982, according to Willkie Farr & Gallagher: Indiana, Iowa, Kentucky, Minnesota, Missouri, Nebraska, New Hampshire, North Dakota, Ohio, Rhode Island, Texas and Utah. And, a federal court has interpreted Georgia's case law as establishing the restatement rule, Ms. Cooper said.

The Tax Reform Act of 1986, which is expected to be signed into law, certainly will give rise to even more negligence lawsuits by third parties against attorneys, said Alan H. Lazar, a partner in the Los Angeles law firm of Parkinson,

'The Tax Reform Act of 1986 is going to change the whole world of tax shelters,' says Mr. Lazar.

Wolf, Lazar & Leo, which represented the accounting firm in the California case.

"The Tax Reform Act of 1986 is going to change the whole world of tax shelters. This means that the tax planning that was carefully constructed by accountants for clients now has come to a screeching halt, and accountants have to guide them in new directions and unchartered waters," he explained.

But, accountants have claimed some victories this year: The Western District of Arkansas in *Robertson v. White* reaffirmed the state's privity doctrine precedent. "That was a very encouraging decision," Ms. Cooper said.

And, Gov. James Thompson of Illinois signed a law Aug. 6 that appears to be a hybrid of the restatement rule. The statute extends an accountant's liability for negligence to a third party only when all third parties "have been identified and recorded by the CPA and its client," explained Martin Rosenberg, executive director of the Illinois CPA Society.

The society initially drafted legislation that would have established the privity doctrine, but the measure was modified to its current form when a state bankers association intervened.

"We thought it was a reasonable amendment to offer, and we supported it," Mr. Rosenberg said.

Several state accountants societies since have contacted the Illinois society about the legislation, according to Mr. Rosenberg.

But, the Illinois law already may apply to accounting offices in other states if the parents of those offices are headquartered in Illinois, the official with Arthur Andersen pointed out. In those cases, the contract between the accountant in another state and its client would have to specify which state law would apply to the contract, the official explained.

Meanwhile, the AICPA has developed a model statute that embodies the Ultramares decision and will be urging state legislatures to adopt it. ■

EIL market could expand next year

By ROBERT A. FINLAYSON

The market for environmental impairment liability insurance remains extremely restricted, but brokers and consultants see signs of improvement during 1987.

Generally, brokers report, the capacity crunch in the commercial property/casualty insurance market began easing in July, with insurers re-entering lines of business they had dropped altogether in early 1985.

The EIL market is likely to benefit from the general increase in capacity in the property/casualty market, these brokers explain.

Some encouraging developments include:

- The expectation on the part of brokers and consultants that one and perhaps two major U.S. insurers will begin writing EIL coverage on a stand-alone basis in 1987.

Sources declined to identify these insurers, saying discussions within top management at these companies are at a very preliminary stage.

- American International Group Inc., one of only two major EIL markets, recently expanded its program to include contractors that clean up hazardous waste sites.

And, officials with New York-based AIG say they are looking to increase the current $10 million aggregate limit on their EIL policies, contingent on additional support from reinsurers.

- Closely guarded discussions are taking place among several London underwriting agencies about the possibility of supporting EIL coverage written by one or more of the U.S. insurance exchanges.

No additional details were available, but brokers who spoke on condition they not be identified say they are optimistic about the possibility that this facility could be operational by the end of 1987.

- Interest is continuing among major U.S. corporations in developing several captive insurance companies to write EIL coverage, and two major U.S. brokers are participating in these efforts.

In early September, *Business Insurance* learned that Johnson & Higgins, the nation's third-largest insurance broker in 1985, had agreed to participate in an effort by a Washington law firm and a New York bank to put together a major EIL captive (*BI*, Sept. 1).

Last week, *BI* learned that Alexander & Alexander Services Inc. is examining the concept of sponsoring a second major EIL captive. Officials with A&A, the nation's second-largest broker according to 1985 *BI* rankings, confirmed that it is examining the concept, but declined to offer any details.

But, in spite of these developments, brokers and consultants say that, for the moment, capacity in the EIL market remains limited. And, they point out that while interest continues in launching several EIL captives, not one has written its first policy.

"Demand in the marketplace will probably create new sources for this line of insurance," predicts David J. Dybdahl, director of environmental risk management services at Corroon &

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EIL insurance

Continued from previous page
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"The word is that new capacity is developing on a monoline basis," he adds.

D. Jeffery Telego, director of strategic planning with environmental consultant Versar Inc. of Springfield, Va., puts it more strongly: "There will be new stand-alone facilities in 1987."

Both Mr. Telego and Mr. Dybdahl declined to identify the insurers involved.

However, Robert M. Grella, vp and director of technical operations for Alexander & Alexander in Philadelphia, is less optimistic about future market conditions.

Mr. Grella says existing EIL markets are continuing to be "very selective" in the risks they write.

And, he says, despite the current softening of the property/casualty market, he does not see any insurers "jumping back in to offer EIL coverage" at the present time.

Currently, there are only two stand-alone markets for EIL coverage: AIG and the Pollution Liability Insurance Assn., based in Downers Grove, Ill.

AIG is offering EIL coverage on a claims-made basis with limits of $10 million per occurrence and $10 million annual aggregate, while PLIA offers claims-made coverage with limits of $2 million per occurrence, $4 million annual aggregate.

AIG officials say pricing for their EIL coverage has stabilized over the past few months, and they are seeking additional reinsurance support in an effort to increase policy limits beyond $10 million, according to John Amore, vp of American Home Assurance Co. in New York, an AIG unit.

"Whether we can increase our limit, I can't say. We're trying to get input and feedback from the reinsurance markets to see if we can write anything over (the $10 million limit)," Mr. Amore says.

Premium increases on renewals are running from none to 50%, "but it's more toward the lower end on average," Mr. Amore says.

Last year, premium increases on renewals for AIG's EIL policies were running as high as 100%.

Also, Mr. Amore notes that AIG recently began writing EIL coverage for contractors involved with hazardous waste cleanup operations. The program is operating on a test basis, Mr. Amore says, with limits of $1 million per occurrence, $2 million annual aggregate.

The program is designed for contractors that dig monitoring wells, clean waste storage tanks and transport hazardous waste, and for other contractors involved in hazardous-waste cleanup operations.

Currently, contractors that clean up sites on the Environmental Protection Agency's national priority, or "Superfund," list are excluded from the program, Mr. Amore says.

"But we're hopeful that legislation is going to be passed that will allow us to look at all types of cleanup contractors," he adds.

A Superfund reauthorization bill passed by Congress earlier this month, but not yet signed by President Reagan, would limit liability for contractors that cleanup Superfund sites. Mr. Amore says AIG is studying the legislation (*BI*, Oct. 13).

AIG's clients include all types of manufacturers, companies in the business of managing hazardous waste and petrochemical companies.

The company requires applicants for EIL coverage to undergo a rigorous environmental engineering survey before it will consider offering any coverage.

Mr. Amore says PLIA is AIG's largest competitor.

"Their underwriting has increased" in the past year, he says. Further, he says, several primary insurers are writing pollution coverage on an accommodation basis, but "not frequently."

'Whether we can increase our limit, I can't say. We're trying to get input and feedback from the reinsurance markets to see if we can write anything over (the $10 million limit),' says John Amore, vp of American Home Assurance Co. in New York, an AIG unit.

PLIA is a voluntary association of about 30 U.S. insurers. The coverage is written by the member insurers and reinsured through the association.

According to brokers familiar with the PLIA program, the association continues to offer EIL coverage with limits of $2 million per occurrence, $4 million annual aggregate.

Officials with PLIA declined to discuss their program for this article, although they have given interviews in the past.

Policyholders typically are small- to medium-sized businesses with moderate pollution exposures.

One major drawback to the facility is that it can be accessed only through one of the member insurance companies, brokers report.

In addition to these two major EIL markets, several of the recently formed excess liability captive insurers, such as A.C.E. Insurance Co Ltd and X.L. Insurance Cos. Ltd., are offering only sudden and accidental pollution coverage to their members, not full EIL coverage that includes gradual pollution risks.

And, efforts continue to develop several captive insurers that would offer broad pollution coverage.

To date, none of the proposed EIL captives is operational, but sponsors of two of these facilities are still hopeful that they will be up and running by year-end.

The largest of the proposed EIL captives is tentatively named North American Casualty Cooperative Inc. and is sponsored by Johnson & Higgins, Chase Investment Bank and LaRoe, Winn & Moerman, a Washington law firm.

Sponsors had hoped to hold a meeting with companies interested in participating in the facility in late October, but have rescheduled that meeting for the end of November to complete preparations, according to Paul M. Donovan, a partner with LaRoe, Winn.

Mr. Donovan says invitations were sent out to 500 to 600 companies. He says he is "very optimistic" about capitalizing NACC by the end of the year.

Sponsors hope to raise enough capital to offer limits of up to $100 million—10 times the maximum limits currently available in the commercial EIL market.

Sponsors of a second proposed EIL facility, known as the Hypercept—highly protected risk concept—pool, also are optimistic about a year-end start-up date (*BI*, July 14).

After several delays, plans now are moving forward, says Charles P. Priesing, president of Aralie Inc., a Pequannock, N.J., consulting firm and one of two sponsors of the pool.

"The program is moving forward as quickly as we can move it," Mr. Priesing says.

Currently, 44 companies have

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agreed to finance the business plan and actuarial studies are under way with results expected in November.

Mr. Priesing says Hypercept will offer EIL coverage on a claims-made basis with limits of $3 million per occurrence and $6 million annual aggregate.

The Rhulen Agency Inc., a Monticello, N.Y.-based broker and a co-sponsor of Hypercept, is attempting to negotiate reinsurance support for the pool.

Mr. Priesing says organizers are selecting a law firm to prepare the legal documents for the pool, which he says likely will be domiciled onshore.

Hypercept still is looking for additional companies interested in joining the business plan, Mr. Priesing says.

The Hypercept insurance pool is offered to manufacturing companies and excludes waste management firms. Annual sales of those companies participating in the business plan average $100 million, but range between $1 million and $500 million.

Meanwhile, an effort by the Nats2ional Solid Wastes Management Assn. to launch an EIL captive for hazardous waste management firms is on hold, according to Charles A. Johnson, technical director for the association.

NSWMA has been working on putting together the EIL captive, Waste Insurance Liability Ltd., for more than a year. To date, only 17 companies have agreed to participate—13 short of the 30 the association has said must participate before the captive can begin operation.

For companies that cannot obtain environmental impairment liability coverage, environmental consultants advise strict attention to evaluating their own pollution liabilities.

"We just didn't get the participation level we felt we needed," he explains.

Mr. Johnson says NSWMA is now looking at other alternatives, including seeking reinsurance.

If NSWMA is able to get reinsurance support for the captive, Mr. Johnson says the facility could achieve an adequate spread of risk with a smaller group of participants.

Originally, plans called for the facility to offer on a claims-made basis limits of $10 million per occurrence and $10 million annual aggregate, with a $1 million deductible.

Semiconductor maker Intel Corp. of Santa Clara, Calif., also is seeking additional sponsors for its proposed captive, designed for large manufacturers.

Intel says it has about 12 companies interested in participating in the captive and is seeking additional participants. So far, participants have contributed a total of $5 million.

The facility, which likely would be based in Barbados, would offer excess EIL coverage on a claims-made basis with limits of $7.5 million over a $10 million primary layer.

No date has been set to launch the facility, but current members, which include International Business Machines Corp., Alumax Inc. and Lockheed Corp., hope to organize and capitalize the captive by year-end and issue policies by July 1, 1987, according to an Intel spokesman.

For companies that cannot obtain EIL coverage, environmental consultants advise strict attention to evaluating their own pollution liabilities.

"What a lot of companies are doing is assessing their own environmental liability and using that assessment to make an informed business decision," explains Lynne M. Miller, president of Environmental Strategies Corp. of Washington, D.C.

"And," she adds, "that decision might be to seek insurance or to comply with the recommendation in the assessment to reduce or minimize their pollution exposure."

Versar's Mr. Telego says companies should do an "objective in-house audit if they have an in-house environmental staff" or seek the services of an environmental consultant to evaluate their pollution liability exposure.

"The information from this assessment will not only help the company to reduce its environmental liability, but it will help the company get EIL insurance by reducing the level of uncertainty in the underwriter's mind," Mr. Telego says. ■

Sources offer help finding EIL cover

Companies searching for a market that will write environmental impairment liability coverage may be able to find some help from the following sources:

- National Union Fire Insurance Co. of Pittsburgh, Pa., a unit of American International Group Inc., 70 Pine St., New York, N.Y. 02351. AIG asks interested companies to contact their insurance agent or broker for information on coverage.
- Pollution Liability Insurance Assn. 1333 Butterfield Road, Suite 1000, Downers Grove, Ill. 60515. PLIA asks interested companies to contact their insurance agent or broker for information on coverage.
- Hypercept Insurance Pool. Contact the Rhulen Agency Inc., 217 Broadway, Monticello, N.Y. 12701, or call Charles P. Priesing, president of Aralie Inc., at 201-694-7896.
- Waste Insurance Liability Ltd. Contact Bruce J. Parker, National Solid Waste Management Assn., 1120 Connecticut Ave. N.W., Suite 930, Washington, D.C. 20036; 202-659-4613.
- Intel Group. Contact Gary L. Toms, assistant treasurer and risk manager, Intel Corp., 3065 Bowers Ave., Santa Clara, Calif. 95051; 408-987-8585.
- North American Casualty Cooperative Inc. Contact Paul M. Donovan, a partner with LaRoe Winn, 1120 G St. N.W., Suite 800, Washington, D.C. 20005; 202-628-2788.

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Unionmutual Corp. is offering a new program to employers that provides a flexible way to manage both cost and utilization of health care, according to the company.

MedWise was introduced in response to the changing needs of today's workforce, a spokesman for the Portland, Maine-based insurer explained. Only 7% of the nation's workforce resembles the traditional nuclear family of the 1950s, in which only one member of the household worked, he noted.

The Unionmutual program features custom design options for employers with 10 to 250 employees. The options can be added over a period of time to ease the transition to a more cost-controlled medical plan, the spokesman said.

Cost management options available under the MedWise plan include:

- Emergency room deductibles, which steer patients away from expensive emergency rooms for non-life-threatening sicknesses.
- Inpatient deductibles, which heighten employee awareness of less-costly alternatives to inpatient treatment.
- A dual prescription drug plan deductible and lower co-payment for use of generic drugs.
- Elimination of carry-over deductible and expanded calendar year deductible, available from $100 to $500 in $50 increments, and in $750 and $1,000 amounts.
- Mandatory outpatient surgery list, which helps reduce premiums by mandating that specific surgical procedures be performed on an outpatient basis unless otherwise medically necessary.
- Mandatory second surgical opinion list, which reduces costs by ensuring that specific non-emergency surgical procedures are medically necessary and encourages employees to request less costly, less risky forms of treatment.
- Weekend hospital admission limitations.
- Utilization review, including pre-authorization, concurrent review and discharge planning.
- Expanded out-of-pocket amounts, including deductibles and co-payments, available from $500 to $1,000 in $100 increments and from $1,000 to $2,500 in $250 increments.
- Employee hospital bill audit, which encourages employees to find and correct hospital bill overcharges by offering a monetary reward.
- A $5 million lifetime maximum, a long-term care option and a newborn care option.

In addition, MedWise includes coverage for up to 100 home health care visits and coverage for nurse/midwife services.

Further information about MedWise is available through independent agents and brokers.

Delta vision plan

Delta Dental Plan of Colorado is entering the vision care coverage field with a new product that has a built-in savings incentive.

Although plan participants have complete freedom in selecting an eye care provider, DELTA VISION will pay 100% of the cost of services provided by a members of a select panel, while services provided by non-panel members are paid on a scheduled rate basis, explains Dennis Phillips, vp-marketing for the Aurora, Colo.-based non-profit insurer.

The panel of opthamologists, optometrists and dispensing opticians has been assembled in cooperation with Eye Services of The Mountain West.

The rates paid for services by non-panel members are: $30 for an eye exam, $25 for frames, $20 for single lenses, $30 for bifocal lenses, $40 for trifocal lenses and $40 for lenticular lenses.

Also, the plan will pay 100% of the cost of medically prescribed contact lenses dispensed by panel members and $110 for medically prescribed lenses dispensed by non-panel members, according to Mr. Phillips.

However, the plan will pay only $85 for contact lenses dispensed for cosmetic purposes by either panel member or non-panel member providers, he added.

The plan, which is available only to employer groups of 10 or more in the state of Colorado, is being marketed along with the dental program, although it can be purchased as a separate coverage, Mr. Phillips said.

Premiums will vary based on group size, frequency of coverage and deductibles, if any, he explained.

Delta Dental of Colorado is a not-for-profit service corporation governed by a 23-member board of trustees regulated by the Colorado Division of Insurance.

For more information, contact Delta Dental of Colorado, 2821 S. Parker Road, Suite 110, Aurora, Colo. 80014; 303-671-0200.

LTD software

Ability Information Systems Inc. offers new computerized decision support software for disability adjudication.

The "LTD Problem Solver" includes three modules: Social Security Disability offset module; Rehabilitation module; and Any Occupation module.

The software can be used by long-term disability insurers, reinsurers, third-party administrators and self-insurers, according to the company.

The software runs on a minicomputer and costs approximately $300,000. It has been developed to run on hardware produced by PRIME Computer Inc. of Natick, Mass. In addition, AIS currently is negotiating with another hardware manufacturer, according to a company spokesman who declined to identify the computer company.

The Social Security Disability offset module provides rapid identification, documentation and justification of claims eligible for Social Security disability benefits, according to the company. It considers all the pertinent regulations, rules and policies set forth by the Social Security Administration in the Code of Federal Regulations, the Social Security Rulings and the Program Operational Manual System, AIS adds.

The Rehabilitation module assists the rehabilitation specialist in assessment of transferability of skills determinations, occupational choices and job placement. It contains highly developed vocational information from multiple sources,

Continued on page 57

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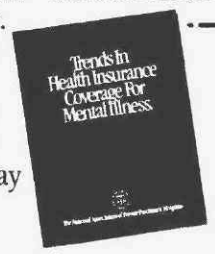

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Continued from page 52

such as the U.S. Labor Department's "Dictionary of Occupational Titles."

The Any Occupation module is a custom process reflecting the individual insurance company's policy definition of "any occupation." It is designed to the company's individual specifications, using the AIS computerized decision technology.

For more information on the "LTD Problem Solver," contact Ability Information Systems Inc., N. 2721 Van Marter, Suite 3, Spokane, Wash. 99206; 509-922-3677 or 800-321-1005.

COBRA software

The Wyatt Co. has developed software to help employers comply with the new, complex rules for continuing health care coverage under the Consolidated Omnibus Budget Reconciliation Act.

Wyatt's COBRA Administration System can generate all written notices to employees required by the law, maintain critical data on covered employees and provide for billing and receipt of premiums, according to the company.

Using the system, employers can:

- Produce letters notifying individuals of their COBRA rights.
- Organize and update information on individuals who have elected the coverage.
- Establish premium invoice and billing procedures, including billing of covered dependents.
- Maintain communications with insurance companies and plan administrators.
- Store data for internal reporting and accounting.

The system can manage data for up to several thousand participants, and can be expanded to handle more if needed, according to Wyatt.

The COBRA Administration System is designed to operate independently in the employer's work environment. It requires an IBM PC/XT or AT, or any IBM-compatible microcomputer with at least a 512K memory.

The price for the system varies depending on the needs of the individual employer, a company spokesman said.

More information on Wyatt's COBRA Administration System is available from any local office of The Wyatt Co. or from the San Diego office: Suite 300, 9339 Genesee Ave., San Diego 92121; 619-458-3900.

Group dental plans

Home Life Insurance Co. is offering two new group dental plans for groups with as few as three employees.

The new Employee Security Program dental plan will cover groups of three to 14 employees. Previously, the minimum number of employees in a Home Life group dental plan was 10, explained Jaye Niel, manager-group sales marketing promotion.

Among the ESP dental plan features are a $50 annual deductible for all services; payment of 80% of basic care charges, including preventive care; payment of 50% of major charges; a $1,000 annual maximum for total dental benefits; and extended benefits after employee termination for dental procedures begun before termination.

For groups of 15 to 74 employees, the company's Select Care Plus program has added Dental II, a new plan that will be available in addition to the existing SCP dental plan.

By adding the Dental II plan, an employer can increase the maximum coverage for each participant to $2,500 from $1,000.

Other highlights of Dental II include: an emphasis on preventive care with waived deductible and 100% coverage of those services; $50 or $100 deductible for all other services; 80% coverage of basic services; 50% coverage of major services; optional orthodontia coverage with no deductible and $1,000 lifetime maximum; and pretreatment review for procedures in excess of $300.

For more information about the new Home Life dental plans, contact Jaye Niel at 201-980-4213.

Case management

Metropolitan Life Insurance Co. is expanding its health care cost management efforts by offering a medical case management program for catastrophically ill or injured individuals, the company says.

Through MCM, Met Life's in-house staff of consultants evaluates the individual cases of severe injury and illness, such as head trauma, spinal cord injury, high risk infants, multiple sclerosis or severe stroke, and suggests individualized alternate treatment options to the patient and physician, explained Pat Sheaffer, director of consulting services.

The alternate treatment options are tailored to allow more appropriate and cost-effective health services while maintaining or improving the quality of care provided, added Ms. Sheaffer, who also is a registered nurse.

For example, if the addition of a wheelchair ramp to the home would reduce an injured individual's length of hospital stay, the consultant will negotiate with the insurer, family and employer for payment for that ramp.

Ms. Sheaffer said Met Life's consultants consider a broad range of factors when tailoring their alternative treatment options, including:

- Age of patient.
- Nature, severity and duration of the condition.
- Prior medical history.
- Family structure.
- Health care provider and location of treatment.

Continued on next page

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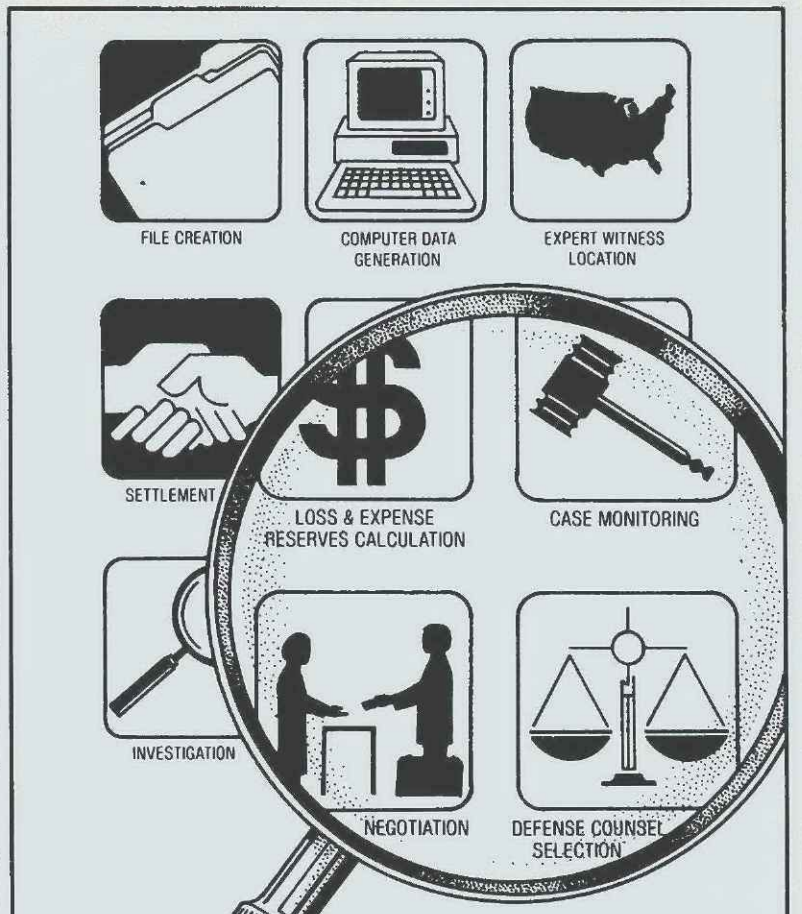

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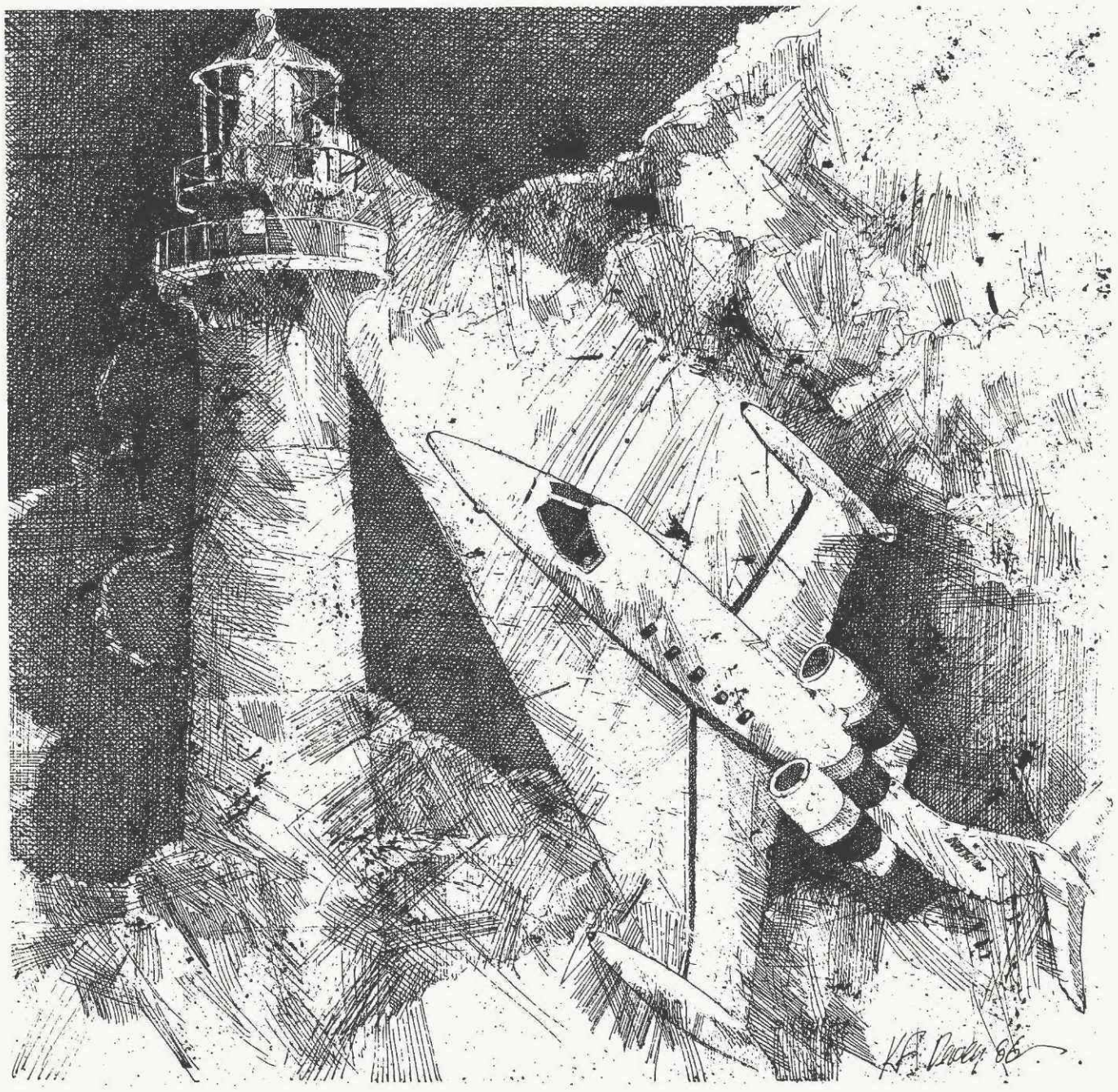

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products & services

Continued from previous page

- Nature of treatment.
- Availability of on-site specialized services.
- Prognosis.
- Necessity, availability and location of specialized rehabilitation facilities and services.
- Potential for cost control.

The plan costs the employer nothing until it is used, according to Ms. Sheaffer. The employer is billed for consulting services on an hourly basis of $110 per hour for nurse consultants and $165 for physician consultants.

The MCM program, although available to Met Life's group customers as a single product, will be marketed as a package with Met-Review, Met Life's hospital utilization review program, Ms. Sheaffer said.

Used in tandem, MCM and Met-Review can effectively monitor and help control the costs of an entire case, from the initial hospital admittance through rehabilitation and back into the home, if home health care is considered appropriate for the specific case, according to Ms. Sheaffer.

For more information, contact an independent agent or broker or Metropolitan Life Insurance Co., 1 Madison Ave., New York, N.Y. 10010-3690; 212-578-2212.

New policy form book

A new reference manual designed to help risk managers, agents and brokers understand the changes being incorporated into policy forms is available from the International Risk Management Institute Inc.

"Commercial Liability Insurance" discusses the pertinent coverage and coverage trigger details of the new claims-made and occurrence umbrella/excess policies being introduced by insurers, according to its publisher.

The extensive text delves into the variations found in umbrella/excess policy insuring agreements, including conditions, definitions and exclusions, as well as the implications of those variations.

Possible pitfalls involved in structuring layers of liability programs are discussed, and emphasis is given to coordination of umbrella/excess insurance and the new Insurance Services Office's claims-made and occurrence commercial general liability policies.

Detailed policy comparison analyses of 10 actual claims-made forms, including those offered by H.S. Weavers (Underwriting) Agencies Ltd. in London and Lloyd's of London, currently are contained in the manual and many others will be added in future supplements, according to its publisher.

The reference also includes an extensive discussion of the excess workers compensation policies often purchased by self-insurers and compares the most important provisions of nine commonly used excess workers compensation policy forms.

A detailed topical index helps manual users find needed information quickly and easily, and periodic supplements will keep the manual current, according to the publisher.

The first year's supplements are provided at no additional cost to subscribers. In addition, subscribers receive "Executive Briefing," a newsletter that reports changes being made to the new CGL, the approval status of the claims-made and occurrence policies, insurance company adoption of those policies, the status of defense cost containment proposals and other current events in the liability insurance arena.

The new reference manual is Volume II of "Commercial Liability Insurance." Companion Volume I covers claims-made coverage triggers and the new ISO claims-made and occurrence CGL policies.

The two-volume set, one year of supplements and the "Executive Briefing" newsletter together cost $229.

For more information, contact the International Risk Management Institute Inc., 10300 North Central Expressway, Building III, Suite 208, Dallas, Texas 75231-3390; 214-363-9656 in Texas, 800-527-2580 elsewhere.

Prescription plan

Businesses with as few as two employees can now qualify for a new national prescription drug

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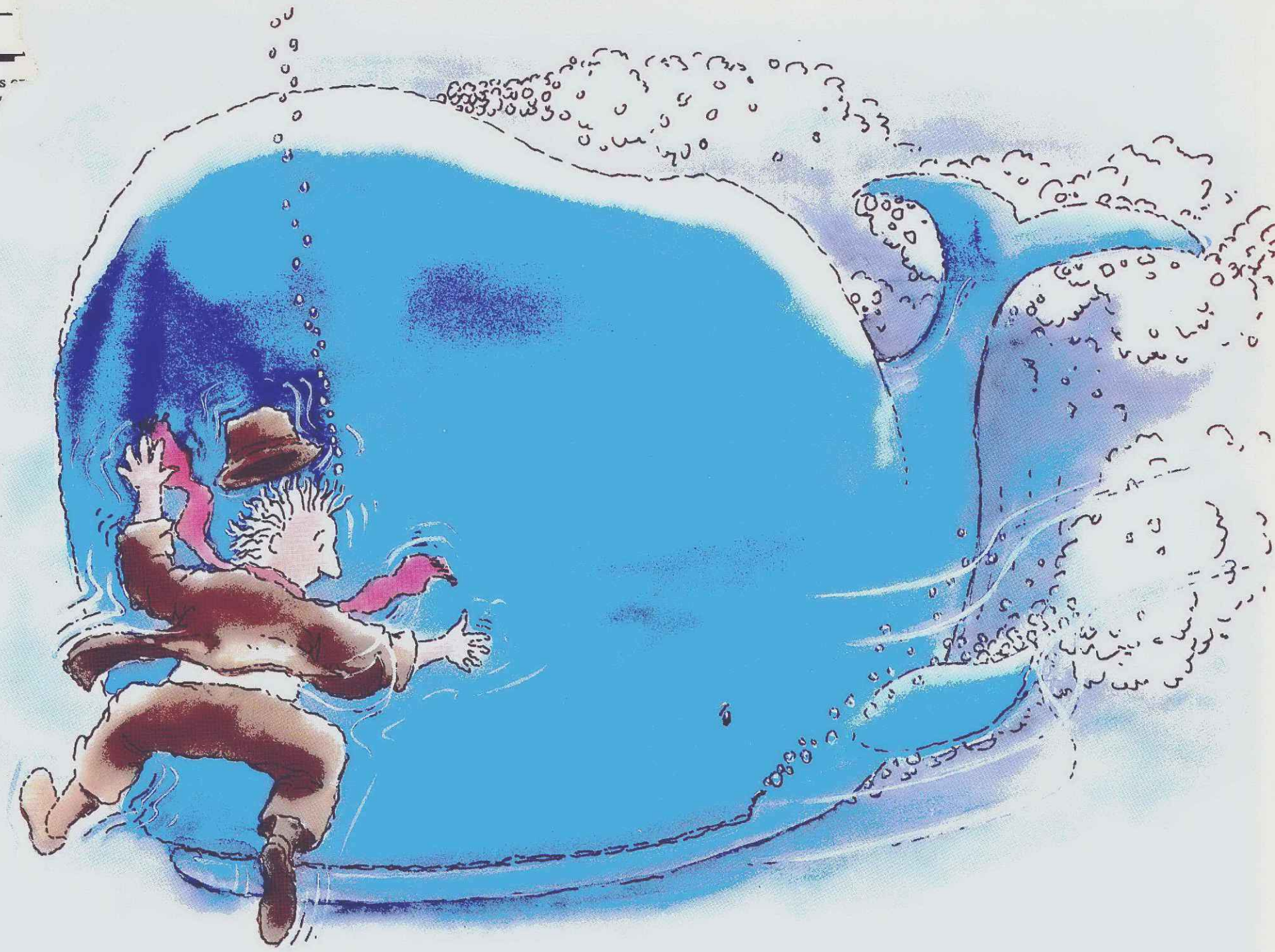

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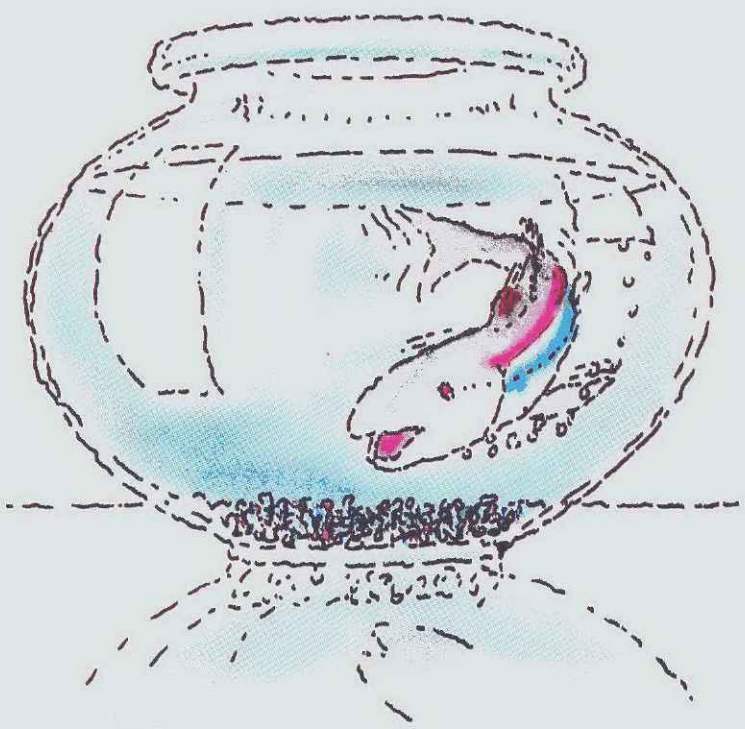

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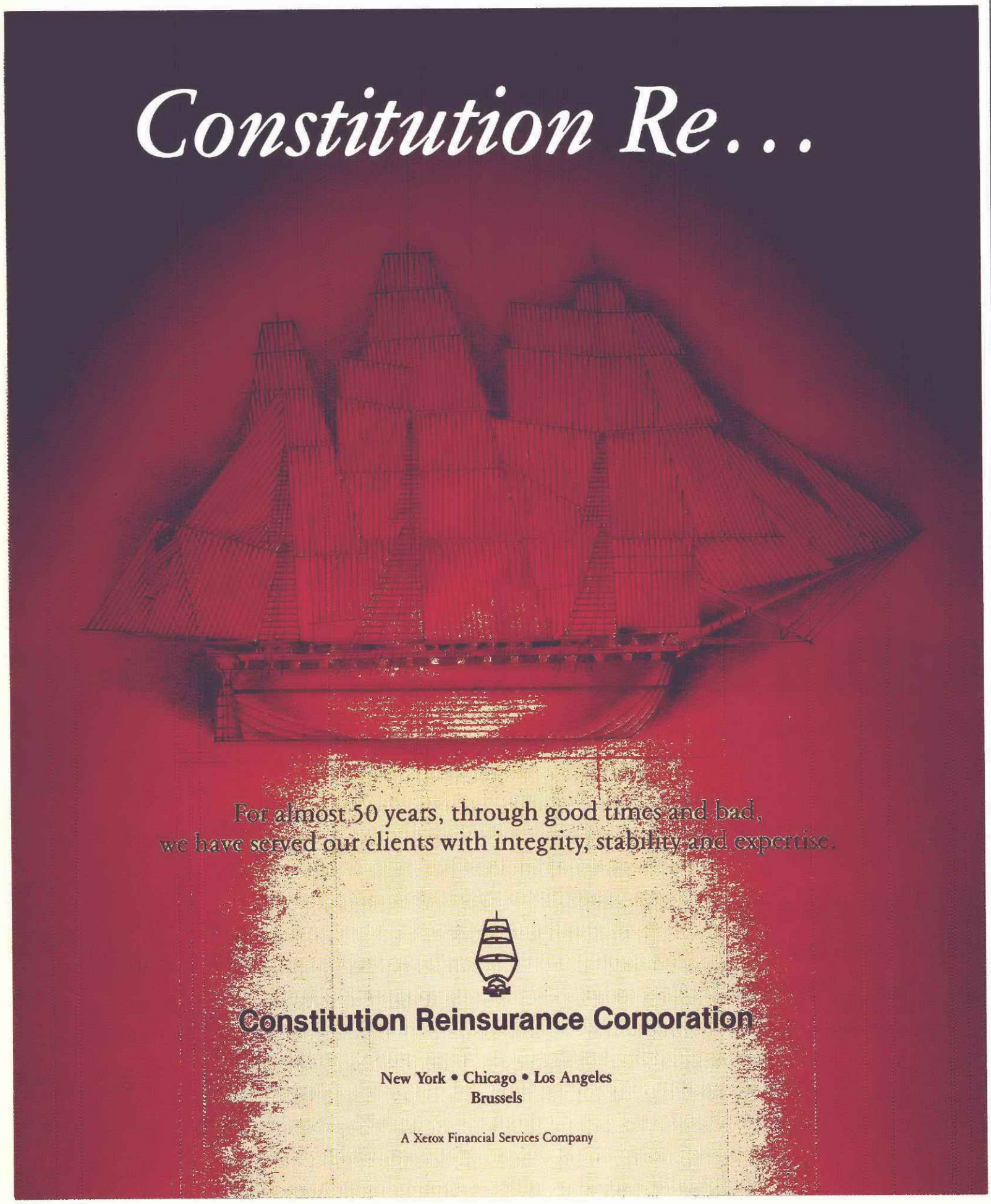


products & services

Continued from page 58

plan available from Variable Protection Administrators Inc.

The American Benefit Plan Health Card, now marketed through independent agents and brokers, will cover 80% of the cost of most prescriptions up to $1,000 per year per plan participant, according to a company spokesman.

The Health Card will be honored at more than 15,000 participating pharmacies throughout the United States and reimbursement forms can be used at non-participating pharmacies, according to the spokesman.

Coverage is underwritten by American Benefit Plans Trust and administered by Variable Protection Administrators Inc. of Cleveland, Ohio.

Employers can establish the plan for employees and their fami for employees alone, an choose a waiting period of 90 or 180 days for new employee according to the third-party administrator.

Although premiums will vary, the typical premium for an individual under the age of 40 in a group of 10 to 20 is $6.04 per month.

The employer can decide whether to pick up the entire tab, or to share the cost of coverage with employees through automatic payroll deductions.

For more information on the American Benefit Plan Health Card, contact Variable Protection Administrators Inc. at 7123 Pearl Road, Cleveland, Ohio 44130; 800-VPA-SALE.

Loss control book

A new book illustrating ways supervisors can control waste has been published by the International Loss Control Institute.

"Practical Loss Control Leadership," was written by Frank E. Bird Jr. and George L. Germain, who pioneered loss control methods in their first book, "Damage Control," which was published by the American Management Assn. in 1966.

The new 446-page text includes a variety of charts illustrating 158 ways to control waste, 172 basic causes of avoidable waste and 110 implementation steps to control loss to people, property, process and profits, according to its publisher.

"Practical Loss Control Leadership" also contains a detailed description for the implementation of a program to control avoidable waste from injury and illness, fire and explosions, general property damage, shrinkage and theft, absenteeism, poor work quality and liability, general and administrative liability, alcohol and drug abuse, and natural and other catastrophic loss.

The book is available now at a special introductory price of $26 per copy.

For information or to order, write the International Loss Control Institute, Highway 78, P.O. Box 345, Loganville, Ga. 30249.

Group universal life

Metropolitan Life Insurance Co. has begun marketing a version of group universal life for midsize companies.

Met Life, the nation's largest group life insurer, began marketing group universal life last July to employer groups of 1,000 or more. The new version of the product is available to groups numbering 200 to 2,000.

The new, midsize product offers a flexible death benefit that combines term insurance and an accumulation fund, or savings account.

The amount of term insurance remains level while the accumulation fund grows, providing for a death benefit that increases as savings grow.

Employees may borrow or withdraw their savings to meet their specific financial needs.

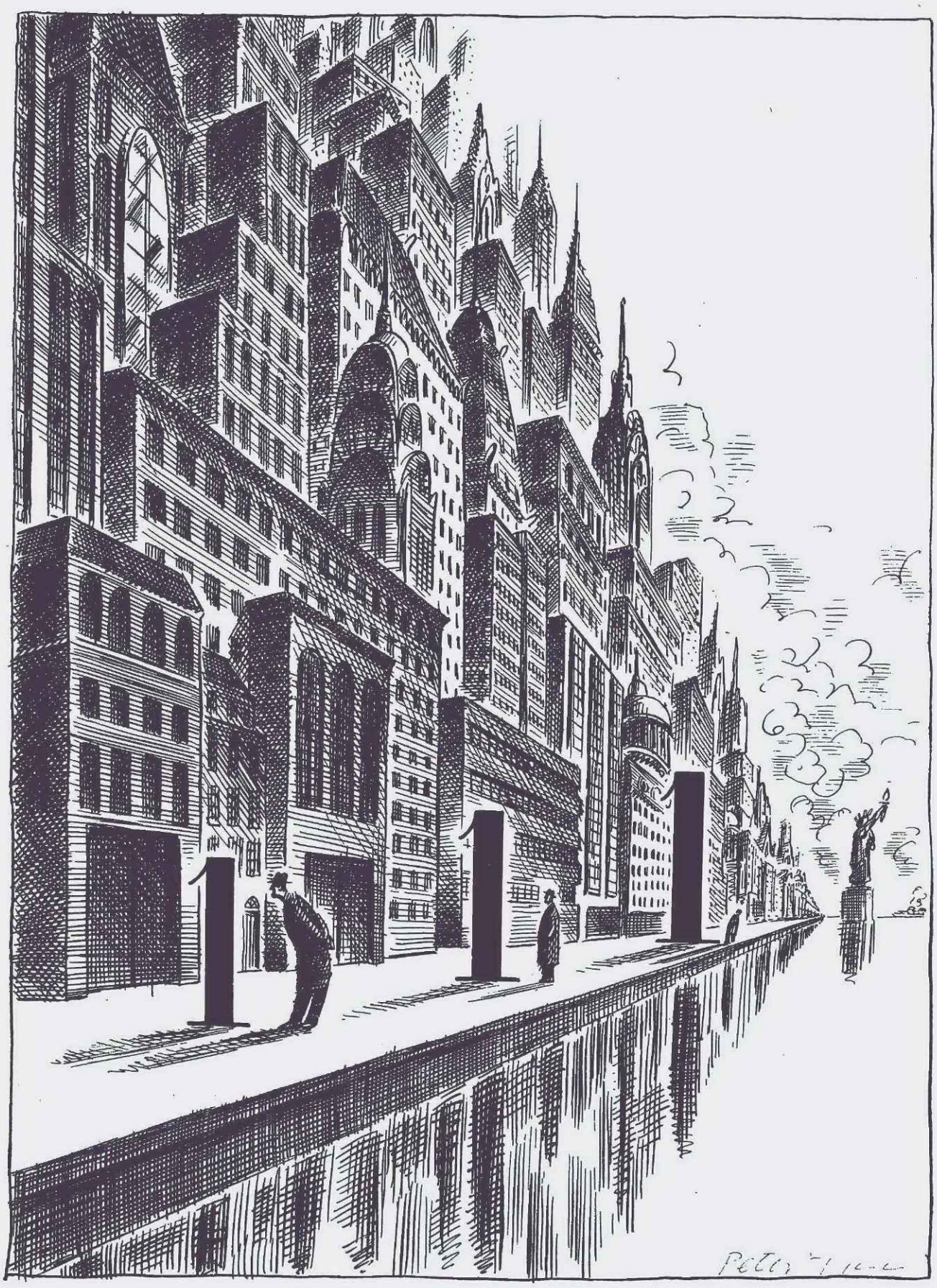
Premiums are paid entirely by the employee through payroll deductions. The amount an employee can contribute to the accumulation fund is limited by federal Internal Revenue Service guidelines.

The new product has two basic plan designs: dollar purchase and salary-related approach:

- Under the dollar purchase approach, employees have a choice of three amounts of insurance: $25,000, $50,000 or $100,000. The coverage is structured according to

Continued on page 62

If you need reinsurance, what do you see as your biggest priority?



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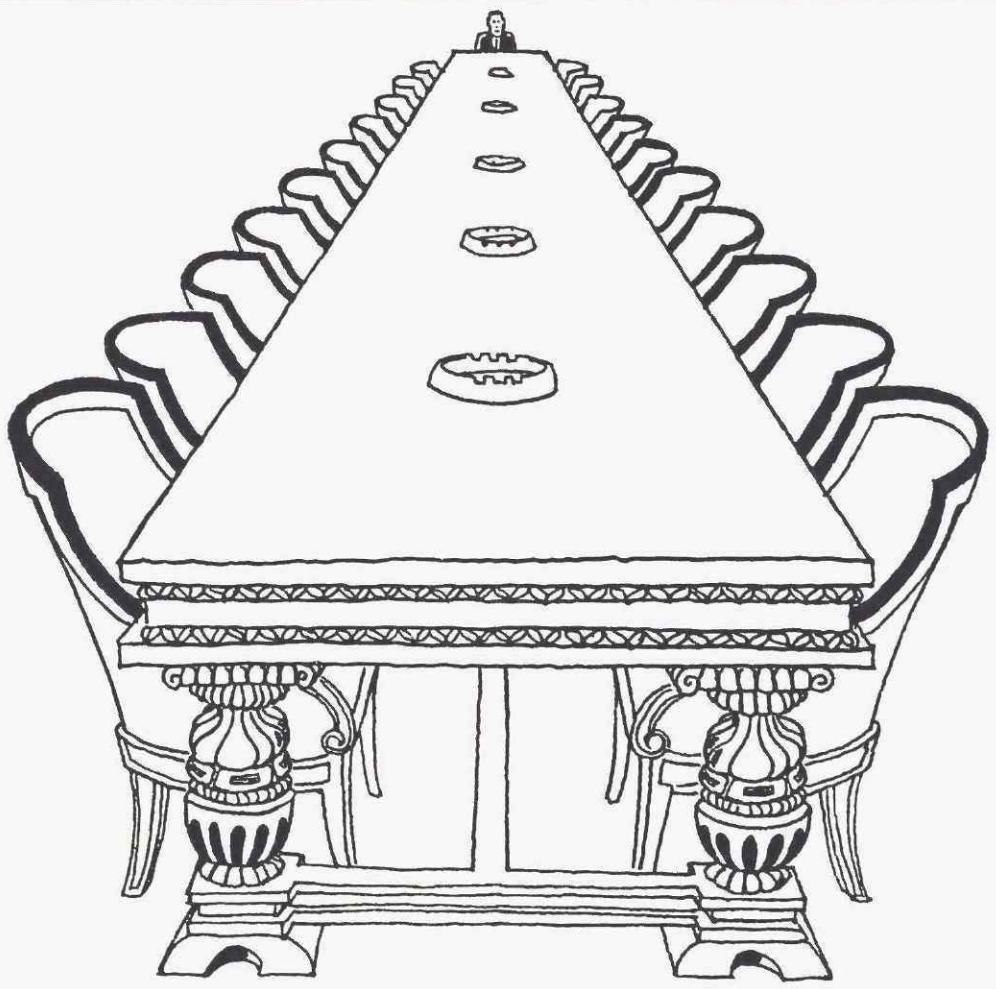

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products & services

Continued from page 60

age brackets of the employees, with a minimum premium for each bracket and each amount of insurance.

Employees may contribute any amount in excess of the minimum to accumulate more cash at earlier ages. Each minimum premium is structured to accumulate approximately 20% of face amount in cash by age 65 for those employees that enter the plan in the highest age bracket.

At lower entry ages, cash accumulation can be much higher, going over 100% in some instances, according to the insurer.

● The salary-related approach is structured in the traditional way—coverage amounts of one, two or three times salary—with minimum target level premiums that would accumulate approximately 20% of the face amount in cash by the t' the employee reaches age 65.

In addition, the program includes three options for retirees: the paid-up insurance option, which allows retirees to purchase paid-up insurance for post retirement protection with no further premiums; the option to continue payment of premiums and retain group universal life coverage; and the cash withdrawal option, whereby retirees may elect to take all or part of their fund in cash.

For more information on the program, contact Metropolitan Life Insurance Co., 1 Madison Ave., New York, N.Y. 10010-3690; 212-578-2212.

Maritime claims

A new book from Lloyd's of London Press prepares all those engaged in shipping for the coming changes as a result of the Convention on Limitation of Liability for Maritime Claims in 1976, effective Dec. 1, 1986, in the United Kingdom.

The convention abolishes the limitations on liability that had existed since the last century and introduces a new system under which a defendant is entitled to limit his liability unless it is proved that he has, in effect, acted willfully or recklessly, the publisher explains.

"Limitation of Liability for Maritime Claims," written by Patrick Griggs and Richard Williams, considers how the convention will be applied in England and explains in handbook form how the rights of the parties to limit liability have been affected by the new legislation.

The authors, both of whom are specialists in this area, examine the convention and the enabling provisions of the Merchant Shipping Act 1979 in detail, on a section-by-section basis. The authors also give background to the choice of wording of the convention and analyze fully the likely effects of the resulting provisions.

The text is available for $60 from the Lloyd's of London Press, 817 Broadway, New York, N.Y. 10003; 212-673-4700.

Loss survey aid

A new audiovisual presentation has been designed to help train insurance company loss control personnel and to offer guidance in performing result-producing surveys, according to the producer of the presentation.

Data gathering, listening techniques and selling recommendations are covered in "Conducting An Effective Survey: The Consultative Technique," which is available from the loss control department of the Alliance of American Insurers.

While the presentation is geared primarily toward new and recently hired loss control representatives, the program is equally valuable to seasoned staff members who want to brush up on their skills, according to Thomas F. Bresnahan, loss control industrial safety services manager.

The presentation, available to Alliance members for $50 and to non-members for $75, includes 66 slides, an 18-minute cassette tape, a copy of the program script with instructions and a storage/mailing carton.

A preview of the presentation is available for $25, which will be applied toward the full purchase price.

For more information or to order, contact the Order Department, Alliance of American Insurers, 1501 Woodfield Road, Suite 400 W., Schaumburg, Ill. 60173-4980. ■

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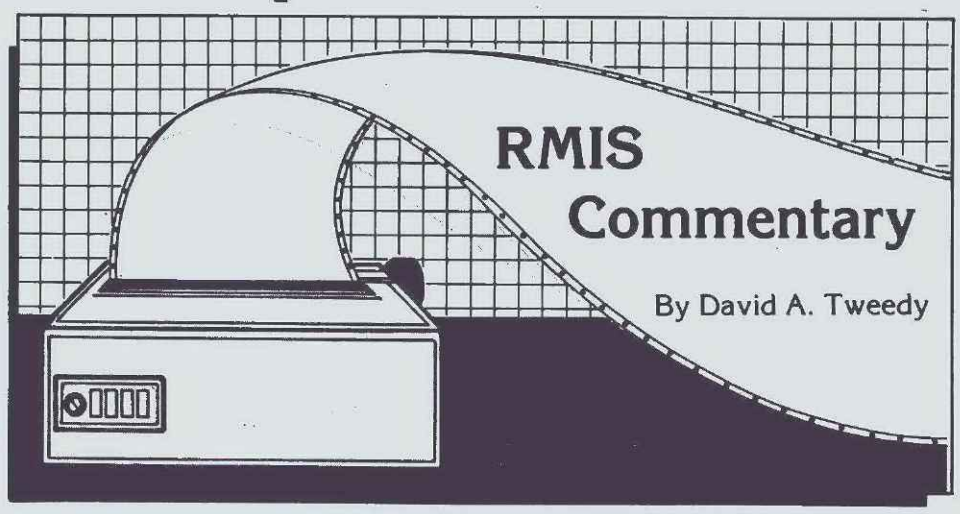
LIMITED OPTIONS

Vendors slow to develop claims-made monitoring software

By David A. Tweedy



IN LAST MONTH'S column, we saw how a risk management information system has potential applications for risk managers facing the specter of problems that are being created by the introduction of claims-made general and umbrella liability insurance policies.

From incident tracking and monitoring policy aggregates to providing well-documented claims loss information, the RMIS seems well-suited to problems that are being created for buyers by claims-made forms.

At least, that was the theory. Now, let us examine what the facts really are.

Indeed, does a risk management information system provide the solution to the claims-made problems faced by businesses?

The answer depends upon the actual usage of the form in the coming years, especially in light of continued opposition to it on the part of insurance buyers.

And, in addition to the anticipated uncertainty surrounding product demand, RMIS vendors may be reluctant to create the necessary software modifications to deal with the claims-made form. Such actions require a substantial investment of both time and money on the part of vendors.

Let's look at these obstacles in more detail.

- Marketing uncertainty.

First of all, vendors are uncertain of markets because of the confusion existing in the insurance industry regarding the claims-made CGL policies.

Especially troubling are the questions of dealing with the several different CGL forms being offered, the claims-made form's impact on the umbrella market and the substantial resistance to the form on the part of corporate insurance buyers.

Does an RMIS provide the solution to claims-made problems? The answer depends on actual use of the form in the future, especially in light of buyer opposition.

Measuring the potential demand for claims-made monitoring software is an issue that RMIS vendors are considering at this time.

Although I believe that the creation of such software to meet existing and forthcoming demand is justifiable, it does remain to be seen whether this will cause a dramatic increase in the number of non-RMIS users desiring to invest in systems.

Thomas Seligman of Seligman Information Systems in Roslyn Heights, N.Y., says that the answer to that question depends on the size of the individual company.

For a smaller company with few locations and low claims frequency, "one can monitor the interface of the primary and excess claims-made policies, the respective aggregates, the extended reporting periods and prior acts dates and all the other gremlins of the claims-made scenario with a legal pad and a set of accurate loss runs," he says.

On the other hand, Rich Kieffer, president of Gallagher Risk Data in Rolling Meadows, Ill., is convinced of the value of a sophisticated risk management information system to serve the needs of large risks with many locations, many exposures, high claims frequency, several claims-made policies and a host of other claims-made-related problems.

Gallagher Risk Data is busily perfecting a software module for its RMIS, Risx-Facs, that will be designed to monitor aggregate levels, extended reporting periods, prior acts dates, interface with excess policies, and the like.

For claims administrators such as Gallagher Bassett Insurance Service, Alexsis Inc., GAB Business Services Inc. or Crawford & Co., having access to such a capability is essential.

- Software challenges.

Marketing, however, is only one of the vendor's problems in deciding how to supply a product to help the risk manager with the claims-made dilemma.

Obviously, there are software challenges that must be overcome in order to be able to provide a workable product.

The increasing array of clones of the Insurance Services Office form—both primary-level policies as well as the many emerging excess umbrella claims-made policy forms—create problems.

For example, how and when a claim or incident is reported may differ among the various claims-made forms. The extended reporting periods are different. The aggregate levels may be different.

Any software module must be flexible enough to account for any number of combinations of claims-made policies.

Secondly, there is the quality of the claims-made data.

In past articles of RMIS Commentary we have seen how it is essential to have accurate data to produce good results from a risk management information system. And, this is especially true in the claims-made situation.

As with all elements of an RMIS, responsibility for success remains with the risk management professional. The RMIS is only a tool, not a substitute for expertise.

If a claim incident report is entered inaccurately into the system, the risk manager may face an uncovered claim possibility from the insurer if he or she is depending on the accuracy of that data when submitting the information required for a quote on umbrella coverage.

Furthermore, a claim may be reported under the wrong policy, in the wrong extended reporting period or before a prior acts date, causing loss information to be distorted and, again, this inaccurate information would cause problems.

Another software problem involves graphically representing the interface between primary coverage and excess coverage.

This sounds like and easy task, but there is considerable software challenge involved to properly clarify the situation to many non-insurance professionals, according to Mr. Kieffer of Gallagher Risk Data.

For an extremely complex insurance program—with many divisions, locations, policies and extended reporting periods—graphical representation of remaining primary aggregate layers, penetration into excess layers, excluding claims due to incident reportings before the prior acts date, etc., may result in a jumbled nightmare on a screen that will be incomprehensible to almost everyone who looks at it.

However, making the screen more simplistic may be misleading to those looking at the graph.

RMIS vendors do not want to create products that are misleading, especially because their clients are depending on the accuracy of the software in order to make their decisions.

In conclusion, the risk management information system offers potential solutions to risk managers and their organizations in dealing with the problems raised by the use of claims-made forms.

It appears that large organizations with multiple locations and exposures and high claims frequency would benefit from a well-designed claims-made monitoring software application.

Smaller organizations are probably better off tracking their aggregates and claims reporting problems manually or with the help of their broker or consultant, according to the experts.

Risk management information system vendors, with the exception of claims administrator-based systems, have not made a dramatic entry as yet into the creation of such software products.

One reason is the current confusion surrounding ISO's claims-made general liability policy—and its clones—and the various excess policies that are currently emerging from other sources.

Another reason is the uncertainty as to whether there will be sufficient demand to justify research and development needed to create such a product.

A heavy investment is sure to be required because of the necessary flexibility this module must have to account for all the variations of the different forms, management of complex insurance programs, the fear of errors and omissions exposures by vendors, and so forth.

I believe that the risk management information system will be a useful tool in helping the risk manager monitor and control the problems created by the advent of the claims-made commercial general liability form.

However, as with all elements of a risk management information system, responsibility for its success ultimately remains with the risk management professional.

Again, the RMIS is only a tool, not a substitution for the expertise of the risk management professional. ■

The Perspective section, which is a forum for readers' opinions, is compiled and edited by Copy Editor Alison Kittrell. She can be reached at 312-649-5262.

David A. Tweedy is a risk management consultant for D.A. Betterley Risk Consultants Inc. in Worcester, Mass. He is the assistant editor of Betterley Risk Management Commentary and the author of RMIS Update, a yearly publication analyzing major risk management information systems and vendors. His column on risk management information systems appears the third Monday of every month.

ASK A RISK MANAGER

What the future holds for risk management

Q **Given the changes in insurance expense and coverage that have taken place in your risk management program over the past two years, along with the dramatic changes in the traditional marketplace, are you preparing your management for any future changes or needs that you foresee in your approach to risk taking and risk management in your corporation?**

A The traditional way of transferring risk at low cost has passed. Price competition has gone. Coverage for some of the real risks facing your company is not available and may never be (as we have known it) in today's or tomorrow's marketplace.

One of the most influential innovations in the way large buyers of insurance do business today is the entrance of our own corporations into the marketplace as participants in providing pooled capital and coverage where none was available.

We have yet to see the degree of this influence or the way our corporations will react—internally and externally—as their capital becomes available to pay others' losses.

Does your management understand that 30 cents or more of every insurance premium dollar goes to pay insurance underwriting expense?

Do they understand that better than one-half of the litigated award dollars go to pay legal and lawyers' expense?

Do they know that insurance company solvency (the insurance company's ability to pay claims) is still a major concern to insurance regulators, brokers and all of us who expect our insurance contracts to respond to our claims? I am told that more than 400 insurance companies are on regulators "watch" lists.

All these dramatic changes—taking place over a relatively short period of time—seem to set the stage, to me, for risk managers to drive home to their own management the need to practice true risk management.

You have to get out and aggressively identify, measure and assess risk. You have to influence management at all levels about the need to practice risk control in a positive manner.

Profit centers mouthing safety management programs must be recognized as such, and you need to spearhead a positive program to reduce claim expense and influence true risk control programs, in both the property and safety management areas.

Without saying as much to your profit centers or senior management you are providing an air of corporate responsibility that can effectively bring some control over loss expense.

If your influence gets attention through the financial arm of your corporation, your approach to the problem will differ from an approach through industrial relations.

Going back to your corporations's recognition of the insurance dollar expense, litigation expense under our tort system and the questionable solvency of insurance companies, there is a major need for your corporation to do what it can for itself before passing any risk taking on to others.

Can you measure these costs under your current risk and insurance management budget?

Certainly you can determine the dollar cost of 30% of your insurance program. Add up your litigated awards—including those that were "settled on the courtroom steps"—and apply some reasonable percentage to these dollars.

Determining what dollar value you should apply to the liability of companies to pay claims may be more difficult. I suggest using a conservative 10% of insurance company paid claims number.

Add these dollars to your current self-insured expense and see if this might get some attention.

Even with all of this ammunition, the problem reduces itself to a political one, and if you have never become a political animal in your corporation this might be the time to do so.

This is what I plan to do.

Putting a price tag on yearly London visits

Q **If your insured program is placed in the London market, what value do you attach to an annual visit to those underwriters who evaluate and price your insurance risk?**

A It should be self-evident to your management that the product you are buying encompasses not only the price (or premium), but also the breadth of coverage.

The value of that coverage is difficult to measure and may only be understandable following a loss. Together, these two factors only can be confidently and successfully negotiated in person with the marketplace.

While this may appear basic to most buyers of large amounts of coverage involving diversified risks, the boss may put more stock in your brokers handling the price negotiation than you. If this is the position in which you find yourself, you should convince your management to reconsider its position. Perhaps some of the following suggestions will help.

Management must recognize your risk/loss financing is divided into two major parts.

Financing loss costs requires a good estimate of anticipated loss costs, with the help of an actuary, and then proper handling of the internal allocation of these costs.

Since this expense occurs year after year, it is not a subject of insurance and risk transfer but proper estimates and allocation. The subject of your London trip is the experience you bring in identifying, measuring and anticipating any major operational risks and analyzing the best and broadest form of risk transfer you can for the most reasonable cost. This is the true risk you are paid to manage in London.

In London your personal contact with the underwriters and the entire market requires your presence, your discussion of your risks and your evaluation of the underwriters' attitude toward your risk. It is a people business in London.

New markets and new ideas for handling your risk always evolve from these trips. It is possible that two or three years are required to persuade the market to meet your coverage needs at reasonable prices.

It also may be harder for an underwriter to say no in person. The broker is in an easier position to accept the underwriter's dictates on cover, price and form without you there.

I understand the client-underwriter relationship has now broadened from the primary marketplace to the reinsurance market. Some reinsurers want to be a part of the evaluation process and see the risk manager and financial people as well. Since reinsurance today drives the London primary market, this is understandable.

The insurance buyer must be the catalyst that shows the true interest and concern in risk management ideals as they relate to his risk.

This does not take away from the broker's influence, which is recognized as considerable, but accepts the fact that your broker may be brokering several risks and can "win some and lose some" and still come out ahead. You have only one risk to present.

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

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

This month's column, on risk management issues, is written by Ralph F. Perry Jr., vp and director of risk management at Amfac Inc. in San Francisco. Joseph W. Duva, director of employee benefits at Allied-Signal Inc. in Morristown, N.J., answers benefits management questions. William J. Miner, an actuary with The Wyatt Co. in Chicago, answers actuarial questions on benefits issues. And, Richard E. Sherman, a principal with Coopers & Lybrand in San Francisco, answers actuarial questions in the casualty field.

Mr. Perry

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

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

Waiver supercedes erroneous payroll deductions

legal briefs

A Georgia appellate court ruled that the duty of an employer to enroll an employee in a group life insurance plan ended with the employee's decision not to be covered.

Harvey Porter was employed as a truck driver for Keheley & Co. Inc., from October 1979 until he was terminated in May 1983. During his employment, he was covered under Keheley's group life insurance plan with Life Insurance Co. of Georgia. Upon termination of his employment, he ceased to be covered.

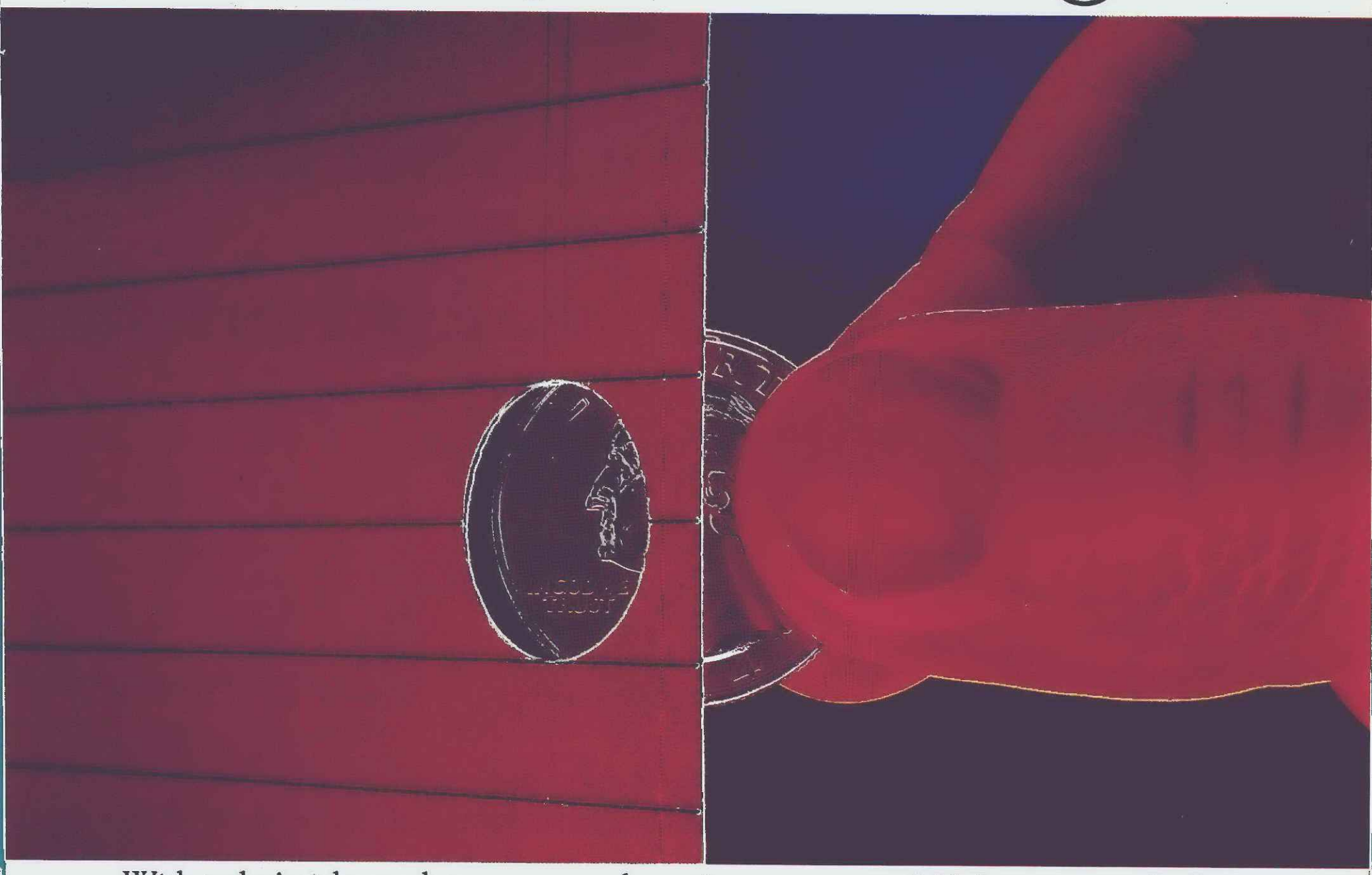
Mr. Porter was rehired by Keheley on June 9, 1983. At that time, he informed the office manager that he had obtained insurance from another source and that he did not want to be covered under the group plan. He executed a written waiver of participation in the plan on June 17. Notwithstanding his waiver, payroll deductions were erroneously made for the insurance premiums pay periods in June and July 1983.

On July 18, 1983, Mr. Porter was killed in an accident while driving Keheley's truck. The premiums were refunded to his estate. But the administratrix of Mr. Porter's estate sued to recover the $10,000 in benefits under the group insurance plan. The trial court ruled for the employer.

The appellate court rejected the adminstratrix's claim that because of the deductions, a new contract came into being. The court concluded that Porter was not covered under the group plan. *Wilson v. Keheley & Co. Inc.*, Court of Appeals of Georgia, Jan. 28, 1986. ■

These abstracts were prepared by Cases Unlimited Inc. Copies of these decisons are temporarily unavailable.

We find ways to get you through.



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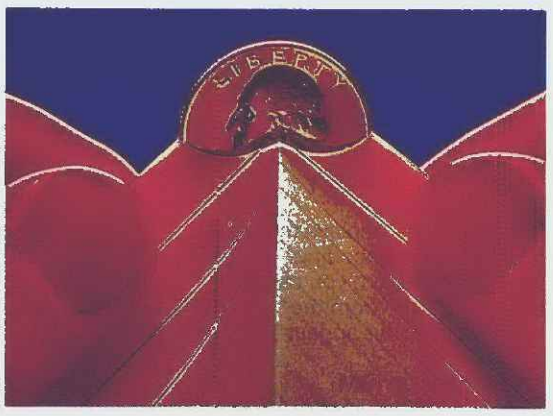

fold the paper on the line, then grip it along the fold and pull gently until the circle is a slot – and the coin will slip through.

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Editor's note: The following speech was delivered by James W. Noyes, outgoing president of the National Assn. of Casualty & Surety Agents, during the group's joint meeting with the National Assn. of Casualty & Surety Executives at The Greenbrier in White Sulphur Springs, W. Va., Oct. 5-8.

Mr. Noyes

Mr. Noyes is president and chief executive officer of Edward L. Noyes & Co. of Media, Pa., which was founded by Mr. Noyes' great uncle in 1886 and which Mr. Noyes joined in 1961. Today, with two branch offices, the firm has insurance revenues in excess of $5 million.

Mr. Noyes' parting remarks to his fellow association members, which include personal reflections and references to his wife, Susan, were greeted with prolonged and enthusiastic applause by the members of NACSE and NACSA.

Allow me to begin this morning with a sincere statement of appreciation for the opportunity to work so closely with the people of NACSA and NACSE.

Susan and I have had the pleasure of coming here each fall for 17 years. We cherish this place, the many friends that we have made here, and fully realize that your likes will be hard to find elsewhere.

For us, the NACSA experience has not been without its sacrifices. It has forced us to choose between two things that we love very much—my vocation and our avocation.

Out of that wrenching decision came a management philosophy that is the subject of my talk this morning.

It was clear to Susan and me early on that a collision between the business and the hobby was unavoidable. We put it off for as long as we could. The business—the vocation—was growing at a rapid pace. We had revenues of $170,000 in 1970 and will do better than $6.5 million in 1986, our 16th consecutive year of average annual compounded growth of 25% or better.

The avocation started in 1978, when Swarthmore College asked me to coach their men's varsity lacrosse team. I say our avocation, because the commitment to coach the team was a true family involvement. Susan fed the players and went to the practices and games. Our daughters were ball girls from the word go.

The program was low-profile at first—only 15 players on the team, and all but three had never played the sport before coming to Swarthmore.

Recruiting was difficult since the average college boards at Swarthmore are 1360 and Division III athletics forbids scholarships.

Nevertheless, the program slowly progressed and reached its climax in 1984.

On Saturday, May 9, 1984, we won our second league championship and had a legitimate shot at the NCAA playoffs. The next day, Sunday, May, 10, we had to fly to London for the NACSA midyear board meeting.

The two paths were preparing to collide, because as we flew out over the Atlantic, the NCAA tournament selection committee was holding its meeting that same Sunday morning.

Upon arrival at the Dorcester, we had a message to call Tom Korn, my assistant coach. The news shocked us: Swarthmore had been ranked seventh in the country and had been invited to play second-ranked Washington College on Wednesday.

The collision had occurred. On the one hand, we had a commitment to my vocation and our association. On the other, seven years of building our avocation had gained us the right to compete for a national championship.

After agonizing over the decision, we knew that we had to go back to Swarthmore. . .but we also realized that the avocation had gotten out of hand and would have to go.

That decision created a tremendous void in my life. I finally admitted to Susan several months later, "You know, I really don't get the same level of enjoyment out of running the business that I got from coaching."

She was ready for it, for she quickly replied, "Why don't you coach the business?"

"Why don't you coach the business?" That question changed by life and the style of our company. It gave me a new enthusiasm for management as well as a new perspective on our industry and its problems.

My story is a personal one about a subject that, in my

Continued on next page

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opinion, is the Number 1 problem that all of us in this room face: That problem is less than dynamic management in today's turbulent business climate.

We come here from the same industry, but entirely different businesses. Whether we are brokers or company executives, agents or in reinsurance, we have one common thread. . . .We are all professional managers.

We talk about common problems: claims-made, computerization, tort reform, tax reform, cycles, alternative distribution systems. But these problems are merely minor, controllable distractions that tend to divert our eyes and our energies from the common goal and responsibility, which is to manage or coach our companies and agencies so that our system of insurance and related products and their distribution will be the best choice for the consumer.

Most of us who run agencies have studied every subject under the sun, except management. In my case, the major concentration in college was English.

In general, agents have had to learn to manage by managing. . .not exactly the most scientific way to prepare for the task.

It would be my guess that some 300,000 to 400,000 employees depend on the ability of the people in this audience to properly manage our businesses.

Coach the business: another way of looking at the science of management. The more I thought about it, the more sense it made. I have not been able to find any concept of management that could not be reduced to simpler, more understandable terms if looked at through a coach's eyes.

The everyday jargon in this land is really sports oriented: "Welcome to the team." "When the going gets tough, the tough get going."

It is interesting to listen to lectures and notice how often the speakers use sports jargon to reduce a point to universal understanding and simplification.

At our shop, each manager is the coach of the players in his profit center. The basic objective for each coach is to maximize the talents of each player. This new concept instantly established a common language and understanding that everyone in our company could relate to.

Allow me to spend a few minutes looking at management from a coaching point of view as it relates to the internal management of our individual companies and agencies.

For the sake of clarity, I will refer to the "companies" when speaking of the insurance companies, and "agents" when speaking of agents and brokers.

'Coach the business: another way of looking at the science of management. I have not been able to find any concept of management that could not be reduced to simpler, more understandable terms if looked at through a coach's eyes.'

Once the concept is developed, we will step back and take a look at our industry and our distribution system from a coach's point of view.

- Equipment. The phone rings one evening, and you get the arm twisted to coach your son's Little League ball club. What is the first thing that comes to mind? You want to make sure that each kid has the proper equipment so that he or she can maximize their basic talents. Families on the tightest of incomes send their son off in new sneakers and sporting a brand new glove.

When we look at our agency from this point of view, it makes it patently clear that our Number 1 operational objective has to be to equip our people with the finest computer equipment so that we can maximize the talents of our employees.

- Planning. The finest equipment is of little value without a plan to use it.

What does a good coach do with a pencil and paper? He doodles, improvises, constantly looking for a better way to leverage the talents of his players.

In business, we call it planning. We would never send the Little League club out onto the field without figuring which kid is the best shortstop and which kid pitches best.

It is mind-boggling to think that many businesses still send their players to their desks without a plan.

In July, we were pressured with market problems and I asked each manager to give me his priorities for the next quarter on his own, without mutual discussion. Much to my amazement, I disagreed with about 25% of the priorities.

Had we not caught it, 25% of the effort for one quarter would have been wasted on non-priority issues. We cannot hope to maximize the talents of our players without proper planning.

Planning develops team concepts and helps convince each employee, or player, that if everyone pulls in the same direction, we can be truly awesome.

Continued on next page

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Noyes speech

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Recent studies show that as each goose flaps its wings in team formation, it creates an updraft for the goose following behind it. The combined efforts of all the geese in the V give the entire flock a 71% greater flying range than if each bird went it alone. Planning for teamwork can truly maximize the abilities of each player, and significantly expand the team potential.

- Change the plan. If a manager looks at planning from a coaching point of view, it is far easier to convince him that he must continually change the plan.

'By changing and updating plans quarterly, we are able to trouble-shoot and make the needed adjustments along the way. It is the best way to avoid what appears to be the norm, which is to manage by crisis.'

How many times have you seen a team go in at halftime with a good lead, only to get killed in the second half? The winning coach changes his plan at halftime; the losing coach does not.

We are now planning on a quarterly basis at our shop. This discipline forces each coach to review his plan at least four times a year. By changing and updating plans quarterly, we are able to trouble-shoot and make the needed adjustments along the way. It is the best way to avoid what appears to be the norm, which is to manage by crisis.

The offensive line must know what the backfield is going to do and when they are going to do it. If the other team changes the defense, then the offense must make adjustments.

We coach in a very turbulent environment of deregulation and we must be prepared to review and change our game plans on at least a quarterly basis.

- Communicate. One of the most difficult management tasks for me is taking the time to properly communicate the plan to the entire organization.

What does every coach do with a blackboard and chalk? He communicates the plan so that each player on the team knows precisely where he is supposed to be and what to do when he gets there.

In business, we are very poor at communicating our plans. We use confusing terms and often are unsure of the process, which magnifies itself as the plan gets passed down the line.

Coaches spend hours planning and they spend hours communicating their plans so that each player executes his assignment flawlessly. The coaches that do the best job of communicating their plans win. The others lose.

Effective communication is deeper than words or slogans. Communication without integrity, respect and trust yields hollow results.

- Time management. Good planning and time management go hand in hand.

The best way that I know to discuss the vital subject of time management is to start with a football game. There are parameters that you must follow: so many men on the field at one time, goal lines that are clear for all to see, sidelines that restrict unproductive motion and definitive time frames for the game.

Think about business for a moment. The whole problem is that there are no parameters: You can work 24 hours per day seven days a week, and the only ones to blow the whistle are your spouse or your health.

We have asked our coaches and our players to establish boundaries for their business activities. This forces them to really come to grips with those functions that are important and those that produce nothing but frustration and stress.

You will find that when you put boundaries on your time, you are forced to eliminate the unproductive activities.

- Productivity and motivation. Have you ever heard a coach state that his kids just didn't seem motivated? A good coach would never say that because in coaching, the coach gets blamed if he fails to motivate the players.

In business, management has blamed the employees for lack of productivity for too long. It is estimated that American business wastes about $75 billion per year due to lack of productivity.

Lack of productivity is not the employees' fault. It is the manager's fault, pure and simple. If our managers start to think like coaches, they might begin to look at productivity a little differently.

Managing as a coach forces the coach to become involved with the individual player and work with each player to maximize his potential so that the end result of the whole is enhanced.

The coaches really put us to shame on the subject of motivation. The Chicago Bears hold hands in front of 100,000 people at Soldier Field, and no one laughs.

At Swarthmore, we were outmanned by everyone we played. We had to win on motivation, conditioning and having a better system than our

Continued on next page

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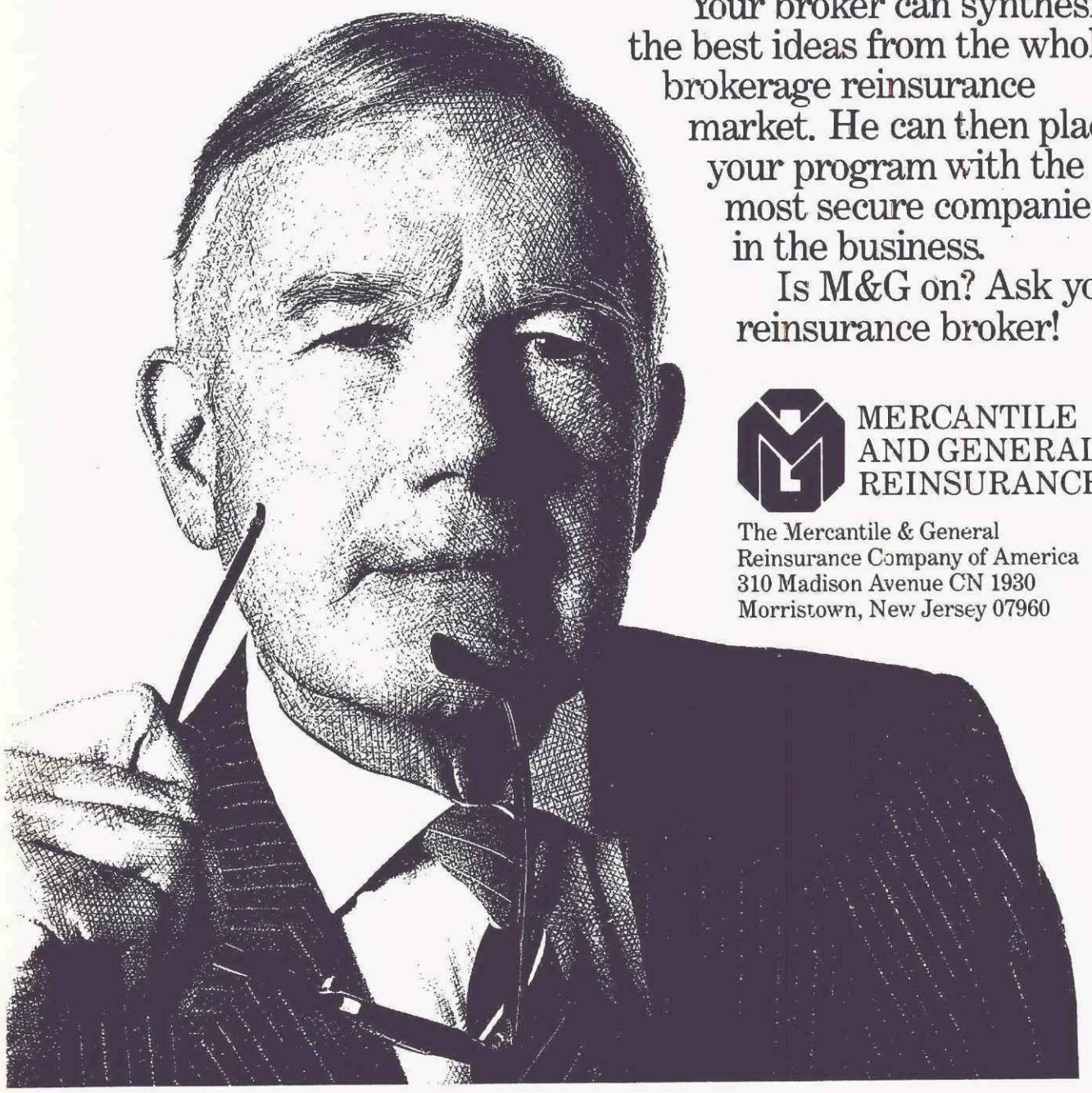
Is M&G on? Ask your reinsurance broker!



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perspective

Continued from previous page

opponents. We broke each huddle for eight years with the words, "Be the best."

We look at the national brokerage firms the same way in today's business environment. We are outmanned, but we won't be outcoached.

When you look at motivation from a coach's point of view, it quickly becomes obvious that motivation is really the anticipation of success. If there is no hope for success, there will be little motivation.

Let me emphasize that success is not only measured in terms of dollar bills. Non-monetary motivation is the most meaningful.

Coaches motivate their players with peer pressure. In business, we tend to keep the results secret because we are afraid that we will hurt someone's feelings. Yet, if you stop to think of the Little League team, the coach isn't going to protect the seventh-grader with a .102 batting average: Every kid on the team knows it, and he knows that they know it. So he strives to do better.

We post our players' results, and the peer pressure to be the best is amazing. We have made a hero out of mediocrity in the business world. Life agencies have posted sales results for years and used every motivational device possible to motivate their salespeople.

Motivation is contagious. Peter Vidmar, the Olympic gymnast, says that he was continually inspired to practice hard by his teammates, who were always working so diligently. He felt that he would let them down if he let up.

By the same token, if we tolerate laziness from one employee, it will spread and give a message to the others that we are willing to accept less than the best.

- Rewards. Coaches find all sorts of gimmicks for rewarding the successful team. Look at Ohio State, with their buckeyes on their helmets. These people are grown men, yet they abuse their bodies something awful in pursuit of another buckeye on their helmets.

Think for a moment how we reward our people. If we don't, we are not recognizing success, and remember that the anticipation of that success is the backbone of motivation, and a motivated team will be a winning team.

Too often in business we reward everyone except the players who get the job done. We take care of the shareholders, the top executives, but not the employees. Then we complain about turnover.

We have made every effort to emphasize to our people that we play as a team, we win as a team, and we profit as a team. Profit-sharing, from our experience, is a vital motivational tool.

'Make something happen. Perhaps my favorite philosophy. Right or wrong, do something! We have grown so cautious in the corporate world. Too much time is spent protecting the rear flank. Around our shop, the favorite expression is "Let's go for it!" '

- Let them play. How many times have you heard a coach criticized because he over-coached? He made it so complicated that he took the spontaneous reaction away from the players.

The poorest coaches tend to over-coach. So do the poorest managers. Give your players the basics and then encourage them to think for themselves.

John Nabors, the Olympic swimmer, says that he got himself excited about going into the pool each day to swim laps because he had a coach who taught him to coach himself.

Good coaches provide an environment for people to motivate themselves. They create an environment that encourages people to want to be better because of their own desire and self-esteem, not because someone makes them.

People have a basic need to feel that they are making a contribution to something, to be a part of something. Develop a plan, communicate that plan, set the parameters, but allow free flow and innovation within those boundaries.

- Make something happen. Perhaps my favorite philosophy. Right or wrong, do something!

We have grown so cautious in the corporate world. Too much time is spent protecting the rear flank. Around our shop, the favorite expression is "Let's go for it!"

Where do you go for help in being a better manager?

Coaches go to clinics and help each other. We don't do enough of that in business.

In our company, we have gotten immeasurable help from our outside directors, who consist of John Cox, former president of CIGNA and president of A.C.E.; Phil Cochrane, former president of NACSA and senior vp of Corroon & Black; David Hales of Hales Associates; Frank McCracken of McCracken Computer; Berney Buge, former executive vp of the INA; and Phil Turberg,

Continued on next page

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I strongly believe that the strain results from a lack of communication. Company/agent relationships are not unlike a marriage. Marriages without communication don't last long in today's environment.

- Be consistent. You cannot play man-to-man in practice and switch to zone during the game. How many times do we as the delivery system have the rules changed on us at the last minute?

We have been so inconsistent in the pursuit of personal lines that we have literally given that segment of the market to our competition. This same competition is now using the assets from personal lines to raid our small commercial lines book of business.

We cannot afford to be inconsistent in the marketplace, and we can no longer to afford to ignore sectors of the business that appear to be unprofitable on a short-run basis. Our industry operates in a governmental and competitive environment that quickly fills the gaps that we create.

Reasonable consistency in pricing is critical to our mutual success. Our corporate customers do not want surprises and wild fluctuations of a fixed-cost item on their profit and loss statement.

We seem to have trouble coping with success.

- Rules. The winning coaches know the rules and constantly try to change them to their advantage.

Our civil justice rules need changing. Everyone in this room should continue to make it a top priority and be willing to work together to make it happen.

Our position is under attack by intelligent, well-funded opposition. We are on the right side of the issue. We must prepare our defense and have the facts and the figures and information in a format so that all will clearly understand our position.

We must try harder as an industry to understand what the public wants to know and why they want to know it. A lack of proper explanation only increases the credibility gap between the public, the legislators and our industry.

Our strength on the agency side is in our numbers and our ability to lobby. We stand ready and able to work with you. We need to be called on at the beginning of an issue so that we can truly work together. Once the decision is made in a vacuum, it is too late to call on our key man contacts.

We are making some progress with tort reform. More than 44 states have enacted some type of tort reform. My guess would be that very few in this room would have predicted that degree of success last year.

We are gaining, but it is only halftime. We cannot allow the comfort of a return to profitability to diminish our effort.

The rules issue is deeper than civil justice. Look at claims-made for a moment.

We as brokers look to the companies for a consistent, uniform, explainable set of rules so that we can deliver the product in an efficient manner that will provide the policyholder with the protection he needs and deserves. As things look at the present, we will probably get, at best, an occurrence form from the courts at claims-made premiums.

There is an old adage in coaching: "Don't live with your mistakes." This issue needs the immediate attention of the companies and ISO, for as it stands now, it is clearly a mistake.

The issue is not whether you prefer claims-made or occurrence in a pure sense, for they both have their place. Rather, the point is that the current climate of indecision, non-concurrent forms and the discrepancy from state to state will challenge the best producer.

The pressure on errors and omissions coverage of your sales force is at the breaking point. We have asked for your help.

Our future and yours depend on it.

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We have miles to go and promises to keep on this one.

• Integrity. We must insist on it in our shops, we must insist on it with each other.

The soft market was caused by a lack of integrity in our underwriting and pricing standards. We got sloppy, and we paid for it.

That, coupled with an excessively tight market, created public doubt and distrust of our business. All one has to do is read the papers to realize the extent of public concern.

We must get our heads out of the sand. If the buying public can learn to live without us, then they surely will.

Look at the expansion of the Risk Retention Act in Washington, for example. Buyers are begging for alternatives to our system and to our products.

All of us must work constantly to protect the integrity of our profession. Our industry's financial reporting must be of unquestioned integrity, clear, accurate and beyond reproach.

• Be good mudders. Successful athletes love to play in any weather. Bring on the mud, the snow, the rain and the wind, for they are merely minor distractions.

So are claims-made, computers, cycles and government intervention. The well-coached team doesn't let these things bother them because they have planned for them.

I have been coming here for 17 years, and each year I hear a scenario telling us how we are going to be eliminated. This industry suffers from a negative paranoia of being eliminated.

The problems have to be addressed; they cannot be ignored. But they are controllable.

In fact, we have created most of them. They will go away, and new ones will surface.

What we cannot do is focus on the distractions to the point that they drive our system and cause us to alter our basic game plan.

• Positive thinking—the winning attitude. The successful coaches put us to final shame on this one. They make it fun to play. How many times have you heard someone criticize a coach because his kid wasn't having any fun playing ball?

Our goal at Swarthmore was to be the best that we could be and to have fun doing it. How many of us run our companies on the basis of making our goals and having fun doing it?

How many of us are down on the insurance business? What does this negative attitude say about the people in our organization?

Can you imagine a football coach who didn't show a true and genuine love for the game to his players?

It shouldn't be all that tough for us to think positively. Things aren't all that bad. Buddy Carruth didn't arrive here in his Rent-A-Wreck. Bill Bailey didn't have to hitchhike. Marsh and Mac were able to bring their spouses this year.

We evaluate our managers on their ability to think positively. We will not pay for negative attitudes, for it will permeate the department.

A dead fish stinks from the head. Let's eliminate the word "can't" from our corporate vocabulary.

In coaching, we don't tolerate excuses, but in business we spend hours dreaming them up and listening to them. Let's get a team together that truly wants to play the game.

This industry, the people in this room, are the keystone, the linchpin of the economic system of this great country. Without us, our nation's economy cannot function.

Our integral place in the overall economy was clearly highlighted in the latest pricing and availability crisis. All of the freedom that our people cherish would not be possible if we fail to be good managers—good coaches.

Let's make a goal to lift our heads in pride for what we do. Let's commit to work to be the best that we can be. Let's be positive and watch the feeling and attitude spread throughout our industry to all 300,000 employees and their families.

We really can make a difference if we work together. What a privilege it is to be in a position where you can make a difference. Very few people in this world have the opportunity to make a difference.

A great opportunity. An awesome responsibility.

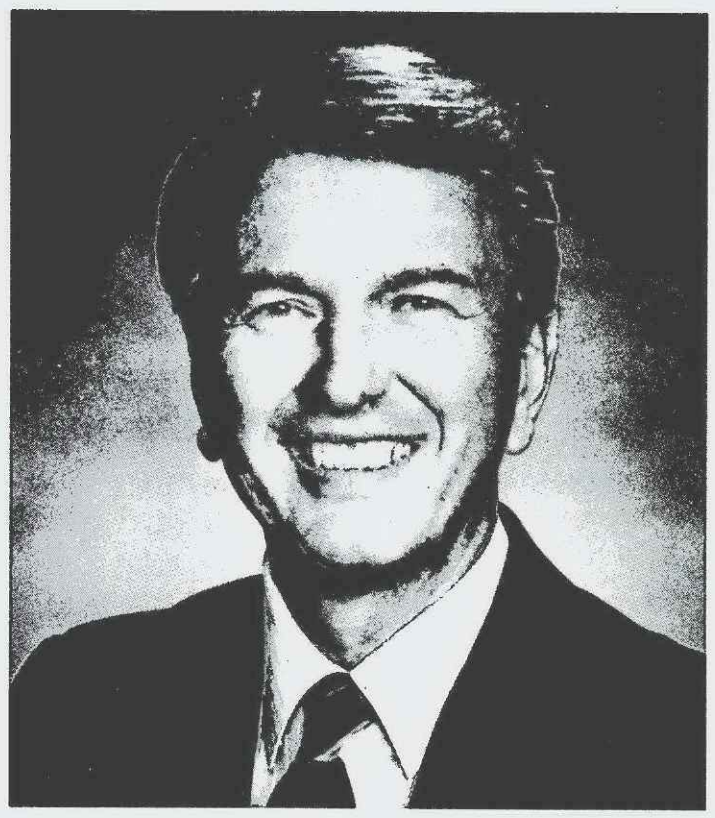
This industry needs leadership. This industry needs effective management that is dedicated to coaching our players to develop to their fullest potential.

Our society is crying out for leadership as it feels the effects of liberal lawsuits and escalating premiums. The sales force needs leadership and the manufacturers need leadership.

This leadership must come from the people in this room. Our Number 1 problem in this industry today is the challenge of fulfilling our management responsibilities to our companies and to each other.

Each of us needs to renew our personal commitment to be the best manager, the best planner, the best communicator, the very best coach that we can be.

Only then will the consumer make the decision that our system of insurance and related services and its system of distribution is the best possible choice. ■



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OCT. 22-23. Strategic Planning for Raising Capital for the Insurance Industry conference in New York, sponsored by Executive Enterprises Inc.; $795; $695 for additional registrants from same organization. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-223-0787; 800-831-8333 within New York.

OCT. 22-24. 16th Annual International Insurance and Risk Management Conference in Salzburg, Austria, sponsored by Management Centre Europe; 69,500 Belgian francs (approx. $1,675). Registrar, Management Centre Europe, 15 Rue Caroly, 1040 Brussels, Belgium 322-516-1911. Telex: 21-917.

OCT. 22-25. Eighth Annual Educational Conference and Professional Trade Exhibition of the American Society for Hospital Risk Management of the American Hospital Assn. in Washington, D.C., sponsored by the ASHRM, Maryland Society for Healthcare Risk Management and the Risk Management Division, Hospital Council of the National Capital Area; $390 for ASHRM/MSHRM or RMD, Hospital Council of the National Capital Area members; $450 for non-members; $325 for each additional registrant from the same organization; $125 for full-time students. American Hospital Assn., P.O. Box 98946, Chicago, Ill. 60693; 312-280-6083.

OCT. 23. Automating Risk Management for Profit and Survival seminar in Baltimore, sponsored by SOFTEC Inc.; free. **Also Oct. 28** in New York; **Oct. 30** in Boston; **Nov. 4** Kansas City, Mo.; **Nov. 6** in St. Louis; **Nov. 11** in Cincinnati; **Nov. 13** in Cleveland; **Nov. 18** in Los Angeles; and **Nov. 20** in San Francisco. Jack Bergers, SOFTEC Inc., 33063 Schoolcraft Road, Livonia, Mich. 48150; 313-261-4440.

OCT. 23. Employee Benefits workshop in Portland, Ore., sponsored by the Public Risk & Insurance Management Assn.; $110 for PRIMA members; $180 for non-members. **Also Nov. 7** in Binghamton, N.Y.; **Dec. 11** in Dallas. Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005; 202-626-4650.

OCT. 23. Annual Fall Health Issues Conference: Helping Iowans Meet Their Needs For Health Care in Des Moines, Iowa, sponsored by Health Policy Corp. of Iowa; $40. Frank S. Severino, Health Policy Corp. of Iowa, 601 Locust, Suite 330, 2 Ruan Center, Des Moines, Iowa 50309; 515-244-1211.

OCT. 23. The 1986 Tax Act-How it Affects Insurance Companies seminar in Los Angeles, sponsored by Ernst & Whinney; $275; $125 for each additional registrant from the same organization. Kathy Stewart, Ernst & Whinney, 18th Floor, 1285 Avenue of the Americas, New York, N.Y. 10019; 212-554-8289.

OCT. 23-24. Coping with Employee Benefits Reform seminar in New York, sponsored by the Practising Law Institute; $390; $40 for course handbook only. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5700.

OCT. 24. Protecting Directors and Officers: Risk Management Alternatives seminar in New York, sponsored by the Risk & Insurance Management Society; $125 for RIMS members; $175 for non-members. **Also Nov. 7** in New Orleans. Risk & Insurance Management Society, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

OCT. 24. Managing Police Liability workshop in Portland, Ore., sponsored by the Public Risk & Insurance Management Assn.; $110 for PRIMA members; $180 for non-members. Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005; 202-626-4650.

OCT. 27-28. How to Audit and Check Insurance Policy Costs and Coverage course in Philadelphia, sponsored by the American Management Assn.; $675 for AMA members; $775 for non-members. **Also Nov. 6-7** in St. Petersburg, Fla.; **Nov. 13-14** in Dallas; **Nov. 17-18** in Bloomington, Minn.; **Nov. 20-21** in Boston; **Nov. 24-25** in Parsippany, N.J. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

OCT. 27-28. 1986 Statistical/Data Quality Seminar in New York, sponsored by the Insurance Services Office Inc.; $350 for ISO member companies; $500 for non-member companies. Insurance Services Office Inc., 160 Water St., New York, N.Y. 10038; 212-487-4722.

OCT. 27-28. Financial Impact of Benefit Plans in Mergers, Acquisitions and Joint Ventures seminar in New York, sponsored by Executive Enterprises Inc.; $795; $695 for additional registrants from same organization. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-223-0787; 800-831-8333 within New York.

OCT. 27-31. Self-Insurance Institute of America Inc.'s Sixth Annual National Educational Conference in Denver. Registration options are: section A (property/casualty and workers compensation issues) $425 for SIIA members, $525 for non-members, $75 for spouses; section B (employee benefits issues) $425 for SIIA members, $525 for non-members, $75 for spouses; and Section C (encompasses both A and B) $525 for SIIA members, $625 for non-members, $95 for spouses. Conference Registrar, SIIA 1986 National Conference, P.O. Box 15466, Santa Ana, Calif. 92705; 714-261-2553.

OCT. 27-31. Health Care Cost Containment Workshops in Boston, sponsored by Health Research Institute; $495 for advanced health care cost containment sessions; $250 for health improvement/wellness sessions. **Also Nov. 10-14** in New York, **Nov. 17-19** in Dallas and **Dec. 8-12** in Chicago. Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

OCT. 28. Using Spreadsheets in Risk Management with a Personal Computer workshop in Los Angeles, sponsored by Cantor & Co.; $95. Alan Cantor, Cantor & Co., 9348 Santa Monica Blvd., Beverly Hills, Calif. 90210; 213-859-7277.

OCT. 28. ISO Commercial General Liability Rating workshop in Dover, Del., sponsored by the Insurance Society of Philadelphia; $65 for ISP members; $75 for non-members. **Also Nov. 13** in Philadelphia. Delaware Tech, Office of Continuing Education, 1832 N. DuPont Parkway, Dover, Del. 19901. For Philadelphia location: Insurance Society of Philadelphia, Public Ledger Building, Philadelphia, Pa. 19106.

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OCT. 28. Second Annual All Industry Day in Tulsa, Okla., sponsored by the Northeastern Oklahoma Chapter of the Society of Chartered Property Casualty Underwriters; $25. Contact Chris Hanses, 8236 E. 71st St., Suite 161, Tulsa, Okla. 74133; 918-250-6100.

OCT. 28-29. Loss Control Management workshop in Nashville, Tenn., sponsored by Corroon & Black of Tennessee; no fee. Contact John Jensen, Corroon & Black of Tennessee, P.O. Box 1020, Nashville, Tenn. 37202; 615-367-9702.

OCT. 29-30. Insurance Industry Mergers and Acquisitions conference in New York, sponsored by Executive Enterprises Inc.; $795; $695 for additional registrant from same organization. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-223-0787; 800-831-8333 within New York.

OCT. 29-31. Liability Insurance Alternatives: From Crisis to Innovation conference in Washington, D.C., sponsored by the National Health Lawyers Assn.; $375 for NHLA members; $425 for non-members. Limited discounts are available to students, academicians or government employees. Contact National Health Lawyers Assn., 522 21st St. N.W., Suite 120, Washington, D.C. 20006; 202-833-1100.

OCT. 30. 15th Annual All Industry Day in San Diego, sponsored by the San Diego Chapter of the Society of Chartered Property Casualty Underwriters; $40; $300 for a table of eight. Edward A. Whitney, Risk Management Advisers, 2667 Camino del Rio S., Suite 271, San Diego, Calif. 92108; 619-295-0378.

OCT. 30-31. Techniques of Self-Insurance course in New York, sponsored by the Practising Law Institute; $390; $40 for course handbook only. Practising Law Institute, Dept. 105-Z7, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5700. Ext. 286.

OCT. 30-31. The Bermuda Insurance Marketplace seminar in Hamilton, Bermuda, sponsored by Malcolm Butterfield Associates; $155. **Also Nov. 4-5.** Malcolm Butterfield Associates, P.O. Box HM 2100, Hamilton 5; 809-295-5472.

OCT. 30-31. Public Agency Risk Pooling seminar in New Orleans, sponsored by the Public Risk & Insurance Management Assn.; $150 for PRIMA members; $250 for non-members. **Also March 5-6** in Clearwater Beach, Fla. Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005; 202-626-4650.

OCT. 31. Managing and Controlling Asbestos Contamination/ Exposure course in Los Angeles, sponsored by the University of Southern California, Institute of Safety and Systems Management; $150. Office of Extension and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 212-743-6523.

OCT. 31. Benefits Behind the Scenes: A Candid Look conference in Burlington, Mass., sponsored by the New England Employee Benefits Council; $40 for NEEBC members; $60 for non-members. Tica Williams, New England Employee Benefits Council, P.O. Box 2594, Boston, Mass. 02208; 617-423-6146.

NOV. 2-5. Second Annual Property Loss Forum and Workshop in Princeton, N.J., sponsored by the National Forum for Property Loss Professionals; $375. Joseph A. Gerber, The National Forum for Property Loss Professionals, 1900 Market St., Third Floor, Philadelphia, Pa. 19103; 215-665-2026.

NOV. 3. Hedging with Financial Futures in the Insurance Industry seminar in New York, sponsored by Peat, Marwick, Mitchell & Co.; $400. Peat, Marwick, Mitchell & Co. Executive Education, 810 Seventh Ave., New York, N.Y. 10019; 212-603-3811.

NOV. 3-4. Superfund: The 1986 Amendments seminar in New York, sponsored by the Practising Law Institute; $390; $40 for coursebook only. Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; 212-765-5700.

NOV. 3-7. Sampling and Evaluating Airborne Asbestos Dust course in Los Angeles, sponsored by the Institute of Safety and Systems Management, University of Southern California; $710. University of Southern California, Institute of Safety and Systems Management, Office of Extensions and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

NOV. 4. All Industry Day in San Francisco, sponsored by the Northern California Chapter of Chartered Property Casualty Underwriters; $70 for two sessions (eight seminars comprise the meeting; fee covers one morning and one afternoon seminar plus lunch); $40 for lunch only. Alan P. Liggett, Schroeter White & Johnson Inc., P.O. Box 1439, Oakland, Calif. 94604; 415-832-8000.

NOV. 5. Annual Conference of the Los Angeles Chapter of the Risk & Insurance Management Society in Los Angeles; $70 for members; $90 for non-members. Contact Doreen A. Hall, Angeles Corp., 10301 W. Picot Blvd., Los Angeles, Calif. 90064; 213-277-4900.

NOV. 5. 1986 Insurance Conference in Chicago, sponsored by the Illinois Certified Public Accountant Society/Foundation; $155; $120 each if more than three registrants from same organization. Illinois Certified Public Accountant Society/Foundation, 135 S. LaSalle St., Chicago, Ill. 60603; 312-346-7957; 800-572-9850.

NOV. 5. Workers Compensation for the Day-to-day User in San Fernando Valley, Calif., sponsored by Xordium; $95. Karen Gillett, Xordium, P.O. Box 8422, Newport Beach, Calif. 92658-8422; 714-759-1707.

NOV. 5. Meeting of the Group Underwriters Assn. of America in Chicago; $35 for Group Underwriters Assn. of America members; $50 for non-members. Contact Tom Kirner, Union Mutual Life Insurance Co., Portland, Maine 04122; 207-780-2211.

NOV. 5-6. COBRA and You, the Provider seminar in Hartford Conn., sponsored by LOMA; $295 for LOMA members; $445 for non-members. Anne Heape, LOMA, 5770 Powers Ferry Road, Atlanta, Ga. 30327; 404-951-1770.

NOV. 5-7. Marine Cargo Insurance and Ocean Cargo Claims seminars in New York, sponsored by the World Trade Institute; one day: $410, $365 for additional registrant from the same organization; two days: $640, $575 for additional registrant; three days: $815; $730 for additional registrant. (Marine Cargo Insurance seminar will be held Nov. 5-6. Ocean Cargo Insurance seminar will be held on Nov. 7.) Registrar, The World Trade Institute, One World Trade Center, Floor 55 West, New York, N.Y. 10048; 212-466-4044.

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NOV. 5-7. Claims Management course in New York, sponsored by the Risk & Insurance Management Society Inc.; $490 for RIMS members; $590 for non-members. Fran Jordan, Risk & Insurance Management Society, 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

NOV. 5-7. Retirement Advisors Workshop in Chicago, sponsored by Retirement Advisors Inc.; $495. Retirement Advisors Inc., 919 Third Ave., New York, N.Y. 10022; 212-421-2400.

NOV. 6. Loss Control & Safety workshop in Portland, Ore., sponsored by the Public Risk & Insurance Management Assn.; $110 for PRIMA members; $180 for non-members. **Also Nov. 14** in Tampa, Fla. Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005; 202-626-4650.

NOV. 6. Atlanta Insurance Day '86 in Atlanta; $35. Charlotte H. Graves, Regency Health Care Centers Inc., 8215 Roswell Road, Suite 600, Atlanta, Ga. 30338-1823.

NOV. 6. Insurer/Reinsurer Insolvency: How To Know It Before It Happens To You! workshop in Pittsburgh, cosponsored by the Society of Chartered Property Casualty Underwriters and the Allegheny CPCU Chapter; $125 for CPCU members; $140 for non-members. Society of CPCU, Kahler Hall, 720 Providence Road, CB #9, Malvern, Pa. 19355; 215-251-2747.

NOV. 6-7. Third Annual Banks in Insurance Conference in New York, sponsored by Executive Enterprises Inc.; $795; $695 for additional registrant from the same organization. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-223-0787; 800-831-8333 in New York.

NOV. 6-7. Risk Financing Alternatives: Coping With the Crisis in Coverage course in San Francisco, sponsored by the American Management Assn.; $695 for AMA members; $800 for non-members. **Also Nov. 24-25** in Chicago. American Management Assn., P.O. Box 319, Saranac Lake, N.Y. 12983; 518-891-0065.

NOV. 6-7. National Employee Benefits Institute's West Coast Employee Benefits Meeting in Costa Mesa, Calif.; free for members; $395 for non-members; $100 for each additional registrant. National Employee Benefits Institute, 2550 M St. N.W., Suite 785, Washington, D.C. 20037; 800-558-7258, ask for Sandy Sparacino.

NOV. 6-7. Utilization Management Issues and Innovations: An Emerging Discipline symposium in Orlando, Fla., sponsored by the American Hospital Assn. and the Florida Utilization Review Assn. of the Florida Hospital Assn.; $300 for AHA/FHA/FURA members; $350 for non-members; $50 discount for additional registrants. American Hospital Assn., P.O. Box 92696, Chicago, Ill. 60693; 312-280-6083.

NOV. 7-8. Municipal Liability: The Search for Deep Pocket course in Orlando, Fla., sponsored by the American Bar Assn. Tort & Insurance Practice Section; $350 for ABA members; $325 for TIPS members; $375 for non-members; $300 for young lawyers; $75 for law students. American Bar Assn., Division for Professional Education, Department NI 438, 750 N. Lake Shore Drive, Chicago, Ill. 60611; 312-988-6200.

NOV. 9-11. Casualty Actuarial Society Annual Meeting in Nashville, Tenn.; $225. Edith Morabito, Casualty Actuarial Society, 1 Fern Plaza, 250 W. 34th St., New York, N.Y. 10119; 212-560-1018.

NOV. 9-13. National Assn. of Independent Insurers' 41st Annual Meeting in Atlanta; $250 for members; $350 for non-members and subscribers; $100 for spouses. National Assn. of Independent Insurers Convention Office, 333 N. Michigan Ave., Suite 1632, Chicago, Ill. 60601

NOV. 10. Insurance Representation, Specifications and Negotiations seminar in Dallas sponsored by the International Risk Management Institute Inc.; $235. International Risk Management Institute Inc., 10300 N. Central Expressway, Building III Suite 208, Dallas, Texas 75231-3390; 214-363-9596.

NOV. 10-11. Ergonomics Building Efficiency and Safety in the Workplace course in Los Angeles, sponsored by the Institute of Safety and Systems Management, University of Southern California; $375. University of Southern California, Institute of Safety and Systems Management, Office of Extensions and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

NOV. 10-13. Sixth Annual Construction Insurance Conference in Dallas, sponsored by the International Risk Management Institute Inc.; $595; $485 for Tuesday through Thursday only; $235 for Monday only. International Risk Management Institute Inc., 10300 N. Central Expressway, Building III, Suite 208, Dallas, Texas 75231-3390; 214-363-9596.

NOV. 10-14. Assets Protection Course I—Concepts and Methods course in Dallas, sponsored by the American Society for Industrial Security; $690 for ASIS members; $750 for non-members. American Society for Industrial Security, 1655 N. Fort Meyer Drive, Suite 1200, Arlington, Va. 22209; 703-522-5800.

NOV. 10-14. Modern Safety Management course in Atlanta, sponsored by the International Loss Control Institute; $695. International Loss Control Institute, P.O. Box 345, Loganville, Ga. 30249; 800-554-6001; 404-466-2208.

NOV. 12-14. Back Injury Prevention course in Los Angeles, sponsored by the Institute of Safety and Systems Management, University of Southern California; $275. University of Southern California, Institute of Safety and Systems Management, Office of Extensions and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

NOV. 13. Self-Insurance and Other Risk Financing Techniques workshop in Tampa, Fla., sponsored by the Public Risk & Insurance Management Assn.; $110 for PRIMA members; $180 for non-members. **Also Dec. 12** in Dallas. Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005; 202-626-4650.

NOV. 13. Workers Compensation in Illinois conference in Springfield, Ill., sponsored by the Illinois State Chamber of Commerce Center for Business Management; $90 for ISCC members; $135 for non-members. **Also Nov. 20** in Chicago. Center for Business Management, 20 N. Wacker Drive, Chicago, Ill. 60606; 312-372-7373.

NOV. 13-14. Waste Industry Insurance Forum: Alternate Approaches for Liability Insurance in Hamilton, Bermuda, sponsored by Ardell Insurance Co. Ltd.; $525; $450 for additional registrant from the same organization. Ardell Insurance Co. Ltd., P.O. Box 507, Buffalo, N.Y. 14205-0507.

NOV. 13-14. Sixth Annual Occupational Health Nursing Principles and Certification Review course in Orlando, Fla., sponsored by the Occupational Health Consulting division of Fireman's Fund Risk Management Services Inc.; $275. **Also Dec. 4-5** in San Rafael, Calif.; **Jan.9-10** in Newark, N.J.; **Feb. 19-20** in Schaumburg, Ill.; **March 5-6** in Dallas; **March 19-20** in Philadelphia; **April 2-3** in Torrance, Calif. Annette B. Haag, Occupational Health Consulting, Fireman's Fund Risk Management Services Inc., P.O. Box 3890, San Rafael, Calif. 94911; 415-492-6646.

NOV. 14-19. Thirty-second Annual Employee Benefits Conference in Las Vegas, Nev., sponsored by the International Foundation of Employee Benefit Plans; $450; $150 for pre-conference institutes. Members only. International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

NOV. 17. The Risk Bearing Phenomenon—Alternatives to Traditional Insurance workshop in Washington, D.C., sponsored by the Society of Chartered Property Casualty Underwriters; $125 for CPCU members; $140 for non-members. **Also Nov. 19** in Los Angeles; **Nov. 21** in Seattle. Mari Jennings, Society of CPCU, Kahler Hall, 720 Providence Road, CB #9, Malvern, Pa. 19355; 215-251-2741.

NOV. 17-18. Making the PPO Choice: A Purchaser's Guide to Assessing and Implementing the PPO Product conference in San Diego, sponsored by the American Assn. of Preferred Provider Organizations; $550 for general registration; $500 each for multiple registrants from same organization; American Assn. of Preferred Provider Organizations, 101½ S. Union St., Alexandria, Va. 22314; 703-683-4918.

NOV. 18-20. Training Methods and Techniques in Occupational Safety and Health course in Los Angeles, sponsored by the Institute of Safety and Systems Management, University of Southern California; $420. University of Southern California, Institute of Safety and Systems Management, Office of Extensions and In-service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

NOV. 19. The HMO/PPO Shoot Out seminar in Chicago, sponsored by the Chicago Chapter of the International Society of Certified Employee Benefit Specialists; $75 for members of the Chicago ISCEBS chapter and members of the Midwest Business Group on Health; $95 for all others. Ted Carlson, Chicago Chapter, International Society of Certified Employee Benefit Specialists, P.O. Box 600, Chicago, Ill. 60690; 312-938-7162.

NOV. 19-20. Pensions, Tax Reform and You, the Provider seminar in Hartford, Conn., sponsored by Life Office Management Assn.; $295 for LOMA members; $445 for non-members. Anne Heape, LOMA, 5770 Powers Ferry Road, Atlanta, Ga. 30327; 404-951-1770.

NOV. 19-22. Southern Pension Conference's 17th Annual Educational Conference in Sea Island, Ga.; $250 for members; $350 for non-members. Southern Pension Conference, P.O. Box 47309, Atlanta, Ga. 30362; 404-458-

NOV. 20-21. Damages, New Settlement Techniques and Tax Consequences conference in New York, sponsored by the American Bar Assn. Division for Professional Education, Section of Litigation; $375 for ABA members; $350 for ABA Litigation Section members; $250 for members of government; $400 for non-members. **Also Dec. 4-5** in San Francisco. American Bar Assn., Division for Professional Education, Dept. 441/442, 750 N. Lake Shore Drive, Chicago, Ill. 60611; 312-988-6200.

NOV. 21. Sixth Annual Economic Issues in Workers Compensation in Philadelphia, sponsored by the National Council on Compensation Insurance; $60 for NCCI members; $85 for non-members. Michelle Smith, National Council on Compensation Insurance, One Penn Plaza, New York, N.Y. 10119; 212-560-1026.

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The Datebook is compiled from notices sent to Business Insurance. Notices should be sent at least eight weeks in advance to Datebook, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Business Insurance reserves the right to select meetings of most interest to its readers.

Who...

distributed a $338,000 Special Dividend to small-group policyholders—those with fewer than 100 employees—in 1974 and then followed it with a $6.9 million Special Dividend in 1979?

Sterczek is executive vp of James Group Service

comings & goings: industry

Edwin J. Sterczek is the newly named executive vp of James Group Service in Chicago, a division of Fred S. James & Co. Inc. specializing in mass marketing programs to members of associations.

Mr. Sterczek is responsible for directing sales of all group insurance programs. Before joining James, he spent 10 years with Fireman's Fund American Life Insurance Co., most recently as national sales manager.

Also at James Group Services, **Walter T. Derk**, who has worked in James' Chicago profit center for 20 years, has been appointed executive vp in charge of property/casualty programs and **Richard J. Norton** has been named vp responsible for coordinating individual life insurance programs. Mr. Norton joined James in 1979 as an account executive.

Robert T. Shannon, a senior vp of Fred S. James of New Jersey, has been named profit center manager of the Short Hills, N.J., office.

Mitchell C. Robinson has been named senior vp of Fred S. James & Co. of Oklahoma and manager of James' Oklahoma City service office. Mr. Robinson joined James in 1982 as an account executive. He previously was risk manager for TG&Y Cos.

Other agent/broker changes:

Bill F. Tronnier joined Alexander & Alexander Inc. as director and vp-Energy Division. Most recently, Mr. Tronnier was vp and risk manager for Parker Drilling Co. in Tulsa, Okla. Parker has operations in 17 countries and operates two captive insurance companies. Mr. Tronnier also serves as a director of Wrenford Insurance Ltd. in Bermuda.

Mr. Tronnier

David A. Jollin named president and chief executive officer of Corroon & Black/Fairfield & Ellis in Boston. Mr. Jollin, 40, previously served as senior vp and director of sales at C&B/F&E, a Corroon & Black Corp. subsidiary.

Joe Moddrell Jr. elected chairman of the board and **Joseph C. "Buzz" Lukens** elected executive vp of Insurance Management Associates Inc. in Wichita, Kan. Newly elected directors of the company are **Dan Nyberg** and **Kay Barrett. William C. Cohen Jr.** continues as president and chief executive officer.

William R. Baker elected vp of Baltimore, Md.-based Tongue Brooks Insurance. Mr. Baker joined the insurance brokerage in 1980 and has served in a sales/service capacity. He will continue to work in sales and business development. Prior to joining Tongue Brooks, Mr. Baker was an instructor at the Gilman School in Baltimore.

James R. Arnold named president of TCF Insurance Inc., a wholly owned insurance subsidiary of TCF Banking and Savings F.A. of Minneapolis, Minn. Mr. Arnold formerly was executive vp of Craddock Systems Co. of Tennessee.

Mr. Gow

Jeffrey J. Gow named president of S.H. Gow & Co. Inc., an agency in Buffalo, N.Y. Mr. Gow served as vp and secretary prior to this appointment. He joined the company in 1967.

Also at S.H. Gow: **Richard K. Mason** named senior vp and secretary, having served as vp for the past seven years. Prior to joining the broker, Mr. Mason worked for Aetna Casualty & Surety Co.

Mr. Mason

Joseph M. Wilson has joined Braishfield Associates Inc. as executive vp. He previously served as senior vp at Corroon & Black of Connecticut Inc.

Frank Stack elected vp/secretary and **Ben Napolski** named vp at Lamb, Little & Co. in Rolling Meadows, N.Y. Prior to joining Lamb, Little, Mr. Stack served as a sales executive at Liberty Mutual Insurance Co. Mr. Napolski previously worked for Allstate Insurance Co.

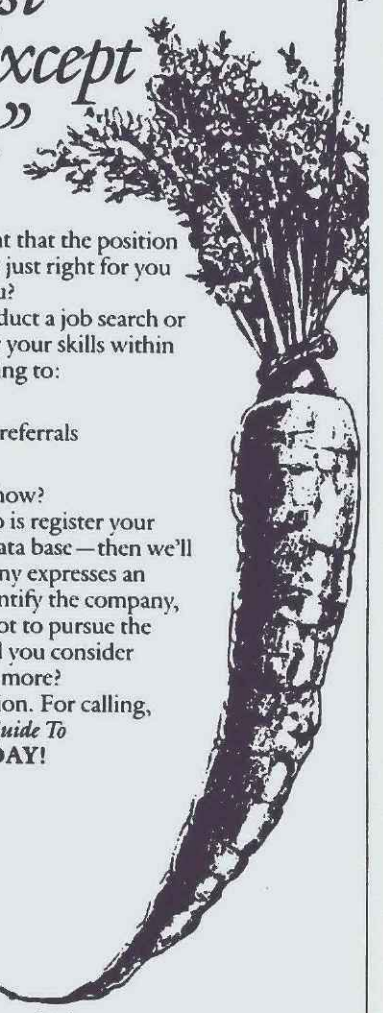
Robert A. Kerekes, Alan G. Page, Stephen D. Siragusa and **Carl S. Swope** named senior vps at Johnson & Higgins in New York. Mr. Kerekes serves as manager of the casualty department's brokerage division. He joined J&H in 1971 and named vp in 1979. Mr. Page manages the firm's association accounts, mass coverages and risk management services departments, having joined J&H in 1978 and named vp in 1981. Mr. Siragusa is deputy manager of the New York casualty department, having joined J&H in 1969 and named vp in 1978. In 1984 he was named sales manager for the New York office. Mr. Swope manages the BeneNet Consulting Group in the New York-based National Benefits Office of J&H. He joined J&H in 1975 and was named vp in 1979.

Also at Johnson & Higgins, **William K. Bradshaw, William B. Freiheit, Gary J. Rakofsky** and **Randi B. Small** named vps in J&H's commercial accounts department, while **David N. Tucker** appointed vp of the mass coverages department.

Marc R. Kimmelman appointed vp at The Frankel Co., regional insurance brokers in Pittsburgh. Previously, Mr. Kimmelman served in similar capacities in New York City where he was employed by Johnson & Hig-

Continued on next page

"I Can Resist Anything Except Temptation."



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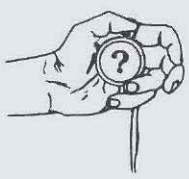

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Who...

repeated history in 1984 with a $7.5 million Special Dividend shared by 25,000 small-group policyholders?

comings & goings: industry

Continued from previous page
gins and Alexander & Alexander Services Inc.

Insurers

Chris Raynolds named area claims manager of the workers compensation division for the Dodson Insurance Group. Mr. Raynolds joined Dodson, a Kansas City-based property/casualty insurer, in November 1985 as a city claims adjuster.

Theodore A. Johnston elected chairman and **Donald E. Simmons** elected president and chief operating officer of PARTNERS National Health Plans in Dallas. The PARTNERS Committee is made up of representatives from both Aetna Life Insurance Co. and the Voluntary Hospitals of America system. Mr. Johnston currently is vp-marketing/administration for Aetna's employee benefits division. Mr. Simmons as been serving as PARTNERS acting chief operating officer for the past six months. Prior to joining PARTNERS, he served as president of VHA Enterprises Consulting Services. PARTNERS develops and manages health maintenance organizations, preferred provider organizations and other health care products using the more than 600 VHA hospitals and associated medical staffs.

Jack S. Smith appointed vp and senior executive of commercial automobile and general liability at Fireman's Fund Insurance Co. in Novato, Calif. Mr. Smith joined Fireman's Fund in 1968, and most recently was assistant vp and director of commercial auto and general liability.

Also at Fireman's Fund, **Evelyn M. Jackson** appointed resident vp and manager of the insurer's Phoenix, Ariz., branch, which serves Arizona and Las Vegas, Nev. She joined Fireman's Fund in 1985.

And, **Leland D. Proimos** named vp in Fireman's Fund's entertainment industry division, located in Beverly Hills, Calif. Prior to this appointment, Mr. Proimos was in charge of the ocean marine underwriting operations for the company's western territory, working out of the San Francisco branch office.

Jack Kirby named senior vp of Chubb & Son Inc. A 22-year veteran of Chubb, Mr. Kirby currently is national manager of reinsurance, responsible for purchasing all reinsurance for Chubb & Son Inc. in Warren, N.J.

Mr. Graham

Also at Chubb, **Dennis C. Costello**, **James L. Talley** and **Baxter W. Graham** elected vps. Mr. Costello, a 12-year veteran of Chubb, currently serves as administrative manager of national claims, responsible for financial management, training and education, and litigation management. Mr. Talley, who has been with the company for 20 years, is deputy manager of the executive protection department. Mr. Graham, an eight-year Chubb veteran, currently serves as national ocean marine manager, responsible for Chubb's worldwide ocean cargo writings and its participations in various U.S. hull syndicates.

Charles W. Hunter elected vp-claims manager of the Amerisure Cos. in Detroit, following the Oct. 1 retirement of senior vp **James L. Schueler**. Mr. Hunter joined the company in 1982 as claims manager of the Michigan region.

Mr. Hunter

John A. Jolley named southeastern regional manager of Swett & Crawford Group. Mr. Jolley, who joined the Los Angeles-based insurer in May, succeeds **W. Dana Roehrig**, who is retiring at year-end.

Mr. Jolley

In addition, the southeastern regional headquarters has relocated to Atlanta from St. Petersburg, Fla. Mr. Jolley is a 30-year veteran of the insurance industry. Since 1964, he has been with The London Agency in Atlanta, serving most recently as senior vp-casualty.

Mr. Ward

Paul G. Gibson appointed resident vp of The North River Insurance Co., a unit of Crum & Forster Underwriters Group. In this position, Mr. Gibson will be responsible for the company's Pittsburgh branch office operations.

S. David Ward has been named president of newly formed Tristar Insurance Co. in Phoenix, Ariz. Prior to this appointment, Mr. Ward served as deputy director of the Arizona Department of Insurance. Mr. Ward also served as president of Dairyland County Mutual of Texas in 1983.

Karen A. Doyle and **John A. Myers** elected vps of American Mutual Liability Insurance Co. and American Mutual Insurance Co. of Boston.

Stewart R. Duke and **Gene Lyon** named resident vps of Fidelity & Deposit Co. of Maryland. Mr. Duke will manage the Chesapeake branch of F&D in Columbia, Md., and Mr. Lyon will head F&D's Richmond, Va., branch.

In addition, **Richard W. Caby** named manager of the Houston branch of Fidelity & Deposit.

Russell E. Fawkes joined Orion Group as vp-Los Angeles region. Prior to joining Orion Group, Mr. Fawkes served as a senior vp at Mission Insurance Cos. in Los Angeles.

Harry S. Chapman elected regional vp-employee benefits at Lincoln National Life Insurance Co. in Fort Wayne, Ind.

Marian A. Taylor named vp at Western Employers Insurance Co. in Santa Ana, Calif. Previously, she served as manager of insurance systems at Pacific Compensation Insurance Co. in San Bruno, Calif.

Ms. Taylor

Gerald R. Scott promoted to vp-claims of Safety Mutual Casualty Corp. in St. Louis. Mr. Scott previously served as assistant vp of claims.

Martin Harshberger joined Transamerica Insurance Group as manager and resident vp of the company's Northwest region, based in Seattle. Previously Mr. Harshberger was vp of marketing for Great Central Insurance Cos. He replaces **Mark Vaughan**, who has been promoted to vp of personal insurance operations for Transamerica in the East.

Dr. Kenneth L. McDonough appointed vp and medical director at American General Group Insurance Co. in Dallas. Previously, Mr. McDonough served as national corporate medical director of Boitrak Inc., a national utilization review firm.

Excess/surplus

Patricia A. Behan appointed vp and manager of G&M Surplus Lines Insurance, a division of G&M Marine Inc. that provides excess and surplus lines brokerage services to independent insurance agents throughout the Gulf states area.

Daniel R. Nikles named a principal and president of IMI International Ltd. in Solvang, Calif. Prior to joining the wholesale brokerage and consulting firm, he was manager in charge of the U.S. marketing and service division of Winterthur Swiss Insurance Co. in Chicago.

Mr. Nikles

Linda Joy promoted to vp and assistant chief executive officer of Nason Associates Inc. in Overland Park. Previously, Ms. Joy was a senior aviation marketer.

Reinsurers

Erkki Pesonen left Kansa Corp. Ltd., the parent company of the Kansa Group of Finland, Oct. 1 to become a full-time officer in Clarendon Group Ltd. Mr. Pesonen presently is chairman of the board of Clarendon. Mr. Pesonen will remain a director of Kansa and a member of the International Division Board.

Also at Kansa, **Matti Packalen** appointed chief executive officer. He is now a division president at Nokia Corp., a leading industrial company in Finland.

Pierre L. Ozendo promoted to vp at General Reinsurance Corp. in Zurich, Switzerland, and **Curtis H. Johnson** joined North Star Reinsurance Corp. as vp, both units of the General Re Group, which is headquartered in Stamford, Conn.

Edwin B. "Barney" Barber has joined Willcox Inc. Reinsurance Intermediaries as a senior vp of the reinsurance brokerage subsidiary, which is jointly owned by Johnson & Higgins and Willis Faber P.L.C. Prior to this appointment, Mr. Barber served as vp at American Re-Insurance Co. in New York, where he had been employed for 22 years.

Roger W. Faber elected vp and head of Intere Intermediaries Inc.'s Minneapolis office. Prior to joining Intere, Mr. Faber served with Guy Carpenter Inc. of Minnesota.

Other suppliers

Jay A. Shapiro has been appointed principal and national director of risk management services for Seidman & Seidman/BDO, one of the nation's largest accounting firms. Mr. Shapiro, 59, who heads the Seidman & Seidman/JLS Risk Management Division, also is president of the JLS Group, a risk management consulting and insurance brokerage firm.

Leonard Resto joined the national office of the risk management consulting group of Ernst & Whinney in New York as a consultant and manager. Prior to joining Ernst & Whinney, Mr. Resto was insurance manager for the Hertz Corp. in New Jersey.

Dr. Daniel Patterson joined the staff of Washington, D.C.-based American PsychManagement Inc. as vp-medical affairs. Dr. Patterson will serve as liaison between member physicians and be responsible for planning and developing all aspects of medical affairs, according to the company.

Glenn Klinksiek appointed consultant in the Chicago office of Warren, McVeigh & Griffin Inc. Mr. Klinksiek will consult on risk management, property and casualty insurance, self-insurance and risk-funding techniques. Previously, he served as risk manager for ATCOR Inc. and as an insurance supervisor for Public Service Indiana.

Diana L. Hilmer appointed senior vp of E&E Benefit Plans Inc., a third-party administrator. Based in Columbus, Ohio, E&E Benefit Plans is an affiliate of Community Mutual Blue Cross and Blue Shield Plan in Ohio. Prior to this appointment, Ms. Hilmer had been vp of CCI Administrators Inc., an affiliate of Compensations Consultants Inc., a specialist in self-funded workers and unemployment compensation.

Mr. Koetz

John M. Koetz appointed general manager of the southeastern region for Marshall and Stevens Inc. Mr. Koetz will be based in the financial and valuation consulting firm's Tampa, Fla., office. Prior to this appointment, Mr. Koetz was vp and special products manager for the firm's north central area, headquartered in Chicago.

Continued on next page

Who...

is about to top its past achievements with yet another Special Dividend—worth $8.1 million—to a record 30,000 small-group policyholders?

Continued from previous page

Dennis L. Murnick named Midwestern regional case director for Structured Benefits Inc., an independent subsidiary of Aetna Life & Casualty Co. Mr. Murnick, who heads SBI's recently established regional office in Downers Grove Ill., joined Aetna as a claim representative in 1967. He was named senior claim representative in 1979 and a claim supervisor in 1973.

Mr. Gale

Michael R. Gale elected vp of Total Group Services of Ohio in Dayton. He was formerly director of operations for the company.

Maurice W. Pomfrey named chairman and chief executive officer of POMCO, an employee benefits consultant based in Syracuse, N.Y.

Mr. M. Pomfrey

Also at POMCO: **Robert W. Pomfrey** promoted to president. He previously was a vp. In addition, **Lynne Gressett** will assume responsibility as manager of the consulting firm's recently expanded White Plains, N.Y., office. She joined the company in 1982.

Mr. R. Pomfrey

Ms. Gressett

Deborah A. Fitzgerald named vp-software development, a new position, at Resource Information Management Systems Inc. in Oak Brook, Ill., a supplier of software of employee benefit information systems. Ms. Fitzgerald previously served as manager-programming at RIMS.

HMOs/PPOs

Arthur J. Mueller appointed vp of marketing for Dental Network of America, a dental HMO program marketed through participating Blue Cross and Blue Shield plans. Prior to joining Dental Network, Mr. Mueller spent 12 years as executive vp of marketing for Capitol American Life Insurance Co. in Cleveland.

Mr. Mueller

William F. Reilly will become president of Heritage Health Systems' PPO operations in Miami, effective Oct. 31. Mr. Reilly currently is vp of health services at PrimeCare Health Plan, a Milwaukee-based HMO operated by Heritage.

William J. Howard appointed regional vp in the group health division of Humana Inc. Mr. Howard will be responsible for the Florida region. Mr. Howard joined Humana in 1984 as director of sales for Humana Health Insurance after serving as sales director for Blue Cross & Blue Shield of Florida.

Ms. Abrams

Helen S. Abrams and **Janet D. Vaughan** appointed directors of planning for MetLife Health Care Network of Massachusetts, an HMO affiliate of Metropolitan Life Insurance Co. Previously, Ms. Abrams served as director of planning for MultiGroup Health Plan in Wellesley, Mass. Ms. Vaughan previously served as manager of health care contracts administration with Blue Cross/Blue Shield of Massachusetts. ■

Ms. Vaughan

info

● The Insurance Information Institute has produced a 96-page monograph entitled, **"Financial Guarantee Insurance,"** which contains a broad overview of the "insurance product of the '80s." Copies may be purchased for $20 by writing the Insurance Information Institute, Publications Service Center, 110 Williams St., New York, N.Y. 10038.

● Two new **guides on health care** information are now available from the Clearinghouse on Business Coalitions for Health Action. "What Employers Should Know About PPOs" is designed to explain the latest alternative to conventional health insurance—preferred provider organizations—which is the fastest-growing type of health care plan in the country. This guide explains how PPOs differ from other health care plans, the advantages and disadvantages of PPOs by type of sponsors, how to evaluate PPOs and decide if they are right for your firm and deliver what they promise. In addition, a glossary of selected health care plan terms is included. Publication number 6939. "A Guide to Sources of Health Care Data" is the title of another book from Coalition Clearinghouse. The guide provides sources of information about health care facts and figures. Designed to save time in locating health care data, the guide provides the name, address and phone number of nearly every organization and publication that produces health-related statistics as well as a brief description of specific data available from each source. Sources include federal and state health agencies, research and consulting firms, foundations, health data publications and more. Publication number 6951. Each publication costs $15 and can be ordered by specifying the publication number. Mail your order to Publications Fulfillment, U.S. Chamber of Commerce, 1615 H St. N.W., Washington, D.C. 20062; 301-468-5128. Make checks payable to the Coalition Clearinghouse.

● A new **safety training resource** from Krames Communications helps employers promote safety on the job by creating safe workstyles. "SAFENESS: Accident Prevention Through A Safe Workstyle" is designed to provide safety directors with another effective resource to include in safety training programs. In SAFENESS, employees will learn about the three hidden causes for most accidents in the workplace: unsafe attitudes, unsafe behaviors and unsafe working conditions. In addition, six tips are offered for effective accident prevention. For a free sample copy of SAFENESS, or information on other safety-

Continued on next page

Let the Experts throw some light on the subject.

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related products, send a written request on your letterhead to Krames Communications, Dept. SAF-11, 312 90th St. Daly City, Calif. 94015-1898.

● "Catastrophe: A Natural Catastrophe Planning and Management Guide" is the title of a new publication from American Reinsurance Co. The 28-page brochure details the causes of natural catastrophes, underwriting against catastrophes, developing and implementing a plan of action and recent developments in **handling catastrophes**. In addition, a pamphlet, "Preparing for a Hurricane" is included. For a free copy, contact Terese Rosenthal, Corporate Communications, American Re-Insurance Co., One Liberty Plaza, 91 Liberty St., New York, N.Y. 10006; 212-618-7000.

● Frank B. Hall Consulting Co. is offering a free brochure that highlights the major reasons for issuing **comprehensive employee benefit statements.** For a free copy, contact Frank B. Hall Consulting Co., Halltech division, 549 Pleasantville Road, Briarcliff Manor, N.Y. 10510.

● Jury Verdict Research has published a recent review of **cases of employees injured performing electrical work**, finding that plaintiffs/employees injured while performing electrical work are receiving favorable verdicts. Copies of "Employees Injured While Performing Electrical Work" are available for $19.50 each from Jury Verdict Research Inc., 5325 Naiman Parkway, Suite B, Solon, Ohio 44139-1065.

● The Public Risk & Insurance Management Assn. has published jointly with the National League of Cities, **"Tort Liability Today: A Guide for State and Local Governments."** The guide offers a history of major areas of law that are the focus of recent debate, including intentional torts, negligence and strict liability. Cost of the book is $15 for PRIMA and NLC members; $25 for others. The guide is available from the Public Risk & Insurance Management Assn., 1120 G St. N.W., Suite 400, Washington, D.C. 20005.

● "Stop Bleeding" is the title of a **first aid poster** from C.A.B. Consultants. The 8½ x 11 poster illustrates first aid for the extremities, mentions the use of tourniquets and explains how to transport severed body parts. Cost of the poster is $3. In addition, a brochure is available that describes **wellness programs** the occupational health and welfare consultant offers. For a copy of the free brochure, a ‡10 self-addressed stamped envelope must be provided. Contact C.A.B. Consultants, 503 N. Clayton, Hillside, Ill. 60162; 312-544-2087.

● Industrial Risk Insurers is offering a new four-page folder that encourages **pre-emergency planning for computer facilities.** Recommendations include a review of the facility's electronic data processing operations and written emergency plans for various disruptions in service—tornadoes, floods, fires, arson or actions by militant groups with explosives, to name just a few. Risk managers, computer personnel, insurance managers and plant managers will find the book of particular interest. For a free copy, contact Mrs. P.A. Sasso, Industrial Risk Insurers, 85 Woodland St., Hartford, Conn. 06102; 203-520-7412.

● Krames Communications has published a new eight-page motivational resource, **"Fitness at the Terminal—Comfort Tips for Computer Users"** The colorfully illustrated pamphlet shows simple exercises to relieve fatigue and discomfort that may result from sitting in front of a computer terminal for a long period of time. For a free sample copy write to Krames Communications. Dept. FAT17, 312 90th St., Daly City, Calif. 94015-1898.

● "Comfortable Retirement: Your Guide to Achieving a Financially Secure Future" is the title of a new 16-page booklet from Fax Communications Inc. that details basics of **financial planning for retirement**, including investments, what to expect from Social Security and where to go for more information. For a free sample copy, write Fax Communications Inc., Department BI, 3279 20th St., San Francisco, Calif. 94110.

● A 36-page Directory of Computer Security Products is being offered free by the Computer Security Institute. The directory lists 93 different vendors of **computer security products and services**. Requests for the directory must be accompanied by a 9- by 12-inch envelope with $1.24 postage affixed; smaller envelopes will not be accepted. Send to Phyllis St. Martin, Dept. R6, Computer Security Institute, 360 Church St., Northborough, Mass. 01532.

● The first edition of DIGEST, a quarterly review of **workers compensation issues** published by the National Council on Compensation Insurance, discusses such topics as workers compensation in the age of Gramm-Rudman, video display terminals and workers health and safety. The book is distributed without charge to insurance professionals, regulators, legislators, academics and libraries. A copy may be obtained from the National Council on Compensation Insurance, Kathy Spicer, Public Affairs, 1 Penn Plaza, New York, N.Y. 10119; 212-560-1014.

● State legislatures enacted more than 235 laws in 1985 covering almost every aspect of workers compensation benefits, and a record number of U.S. workers were covered for such benefits, according to the 1986 Analysis of Workers' Compensation Laws published by the U.S. Chamber of Commerce. The annual analysis tracks **statutory provisions of workers compensation laws** in all 50 states, the District of Columbia, Guam, Puerto Rico, American Samoa and the U.S. Virgin Islands, as well as the federal, provincial and territorial laws of Canada. It also contains 16 detailed charts of such items as the type of law and insurance requirements. Copies are available at a single copy cost of $12 postpaid with reduced costs for bulk orders. Orders should specify both the title and publication No. 6893. Contact the U.S. Chamber of Commerce, 1615 H St. N.W., Washington D.C. 20062; 301-468-5128.

● The Illinois State Chamber of Commerce has published a new folder, **"How to Select a PPO."** The free publication contains guidelines for using this new approach to managing a company's health care costs. Write Pamela D. Mitroff, Manager, Health Care Cost Containment department, Illinois State Chamber of Commerce, 20 N. Wacker Drive, Chicago, Ill. 60606.

● Want to know what industry leaders are saying about **civil justice problems**? The Insurance Information Institute and Fordham

Continued on next page

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University have published a comprehensive bibliography entitled "Civil Justice Information Resources. Among the subjects covered in the bibliography are alternative dispute resolution, automobile accident compensation, civil justice and litigation issues, frivolous lawsuits, jury trials, statutes of limitations, statutes of repose and tort law and reform. Types of insurance covered in the book include liquor liability, medical malpractice, product liability, professional liability and workers compensation. Single copies of the bibliography are available for $20 from Insurance Information Institute, CJIR, 110 William St., New York, N.Y. 10038.

● An illustrated **guide to fire protection systems** has been published by Detector Electronics. The 100-page guide describes the company's line of sensors, alarm panels, controllers and relays that will detonate fast-acting deluge extinguishers. In addition, the guide covers infrared and ultraviolet detectors and combustible gas detectors. Copies of the guide are available without charge from Detector Electronics, 6901 W. 110th St., Minneapolis, Minn. 55348.

● The basics of **risk management and insurance from the perspective of construction companies** are provided in a new booklet published by Associated General Contractors of America and the International Risk Management Institute Inc. The 35-page "Guide to Construction Insurance" covers a broad range of subjects, including automobile insurance, workers compensation, builders risk and contractors equipment. All insurance chapters focus on the new Insurance Services Office's commercial lines policies. Copies may be obtained for $15 ($23 overseas) from International Risk Management Institute Inc., 10300 North Central Expressway, Building III, Suite 208, Dallas, Texas 75231-3390; 214-363-9656.

● Changes in **the new 1986 business income insurance policy** are explained in a new book from BJ Publications. The book, written by James R. Jorgenson, provides descriptions of how coverage is broadened and simplified under the new form, in addition to including limit-setting and pricing guides to keep track of underwriting requirements, rates and rating procedures for the new forms. For a copy, send $9.95 to BJ Publications, P.O. Box 16791, San Antonio, Texas 78216.

● **"Topics in Association Benefits Management-1986"** has been published by the International Foundation of Employee Benefit Plans. The 89-page book is a collection of texts presented at the 1986 Association Benefits Management Conference held last April. Topics covered include association professional liability insurance, underwriting association plans, selecting professionals and retiree health benefits, among others. The cost of the book is $23 for IFEBP members and $25 for non-members. Write to the Publications Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069.

● Metropolitan Life Insurance Co. has a new booklet titled, "Take Control of Your Future with Metromatic," which contains information of special interest to employers who are looking for **opportunities to supplement existing employee benefit plans** on a voluntary payroll deduction basis using Unisex Universal Life Insurance. The booklet is free of charge and can be obtained by contacting Metropolitan Life Insurance Co., 208 S. LaSalle St., Suite 1232, Chicago Ill. 60604; 312-726-8452.

● The HMO Advisory Group, a Washington Business Group on Health Committee, has produced a new report titled, **"The Future of HMO Regulation: A Need for Reassessment."** The report discusses the federal qualification process for HMOs, the community rating system and current employer contribution regulations, among other topics related to HMO rates, levels of benefits and quality of care provided. Copies of the report are available for $10 from the Washington Business Group on Health, 229½ Pennsylvania Ave. S.E., Washington, D.C. 20003; 202-547-6644.

● "Risk Identification: The Foundation of Effective Risk Management" is the title of a **detailed examination of the risk identification process** in the latest issue of Betterley Risk Management Commentary, a publication of D.A. Betterley Risk Consultants Inc. Sections of the study include a review of risk identification methods, techniques, who is involved and how it varies among organizations. In addition, a probability/severity matrix is also included as part of the study. To order a copy, send $25 to D.A. Betterley Risk Consultants Inc., Department RI, 446 Main St., Worcester, Mass. 01608; 617-754-1704.

● "International Benefits—1985-1986" is the title of a collection of texts published by the International Foundation of Employee Benefit Plans. Topics covered in the 130-page book include **international employee benefits, compensation and benefits strategy, U.S. Social Security and totalization agreements.** The texts in the booklet were presented at IFEBP International Benefits conferences in 1985 and 1986. Cost of the book is $10 for IFEBP members and $18 for non-members. To order, contact Publications Department, International Foundation of Employee Benefit Plans, P.O. Box 69, Brookfield, Wis. 53008-0069; 414-786-6700.

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Program evaluates head injury treatment

By STEVE TARAVELLA

ERIE, Pa.—A novel head injury evaluation and referral program can help employers to treat brain and head trauma better—and more cost effectively—under their group health insurance or workers compensation plans.

The program, operated by the Lake Erie Institute of Rehabilitation, offers a comprehensive evaluation of an adult accident victim's brain or head injury.

It identifies the specific brain function impairments—determining whether they affect coordination, reasoning or learning—and then finds the most appropriate treatment for those impairments.

Of the approximately 700,000 new head injuries sustained each year in the United States, about 70,000 are so severe that they permanently disable the person and require long-term care or treatment, according to the National Head Injury Foundation in Framingham, Mass.

The foundation is a not-for-profit advocacy group for survivors of head injuries, their families and the professionals who treat them.

LEIR's year-old program aims "to get as complete a picture as possible as to what it takes for this person to get along in the world given his injury," explains Dr. Robert Sawicki, a neuropsychologist and director of the head injury program.

The patient is evaluated at LEIR by a team of seven specialists: a physical therapist, an occupational therapist, a rehabilitation nurse, a speech pathologist, a consulting neurologist, a psychiatrist and a neuropsychologist.

After its evaluation, LEIR's seven-person team recommends an appropriate facility to care for the patient.

The evaluation usually takes five days, but it can take up to 12 if it involves examining the person's potential response to different rehabilitative techniques, Dr. Sawicki says.

After its evaluation, LEIR's seven-person team recommends an appropriate facility to care for the patient.

Of the 21 patients examined so far, only four patients have gone on to receive treatment at LEIR, which is owned by Rehab Hospital Services Corp., a subsidiary of National Medical Enterprises Inc. in Los Angeles.

The other 17 have been referred to such places as the Independent Living Rehabilitation Program offered by the United Cerebral Palsy Assn. of Pittsburgh and the Devereux Foundation, a nationally-known center in Devon, Pa., that provides rehabilitation services for the neurologically impaired, psychologically disturbed and learning disabled.

LEIR was a pioneer in the field of head injury rehabilitation, and today its prognosis program is one of only a few such evaluation services in the country, according to the National Head Injury Foundation.

Most of the 21 people the program has evaluated so far have sought help after accumulating large medical bills without experiencing any significant recovery from their injuries, Dr. Sawicki says.

And, he adds that most of these patients didn't show improvement under a previous rehabilitation program and were bounced around from one rehab center to another, or were improperly diagnosed at the outset.

Patients have come to LEIR through referral from several sources, including state vocational rehabilitation agencies and employers.

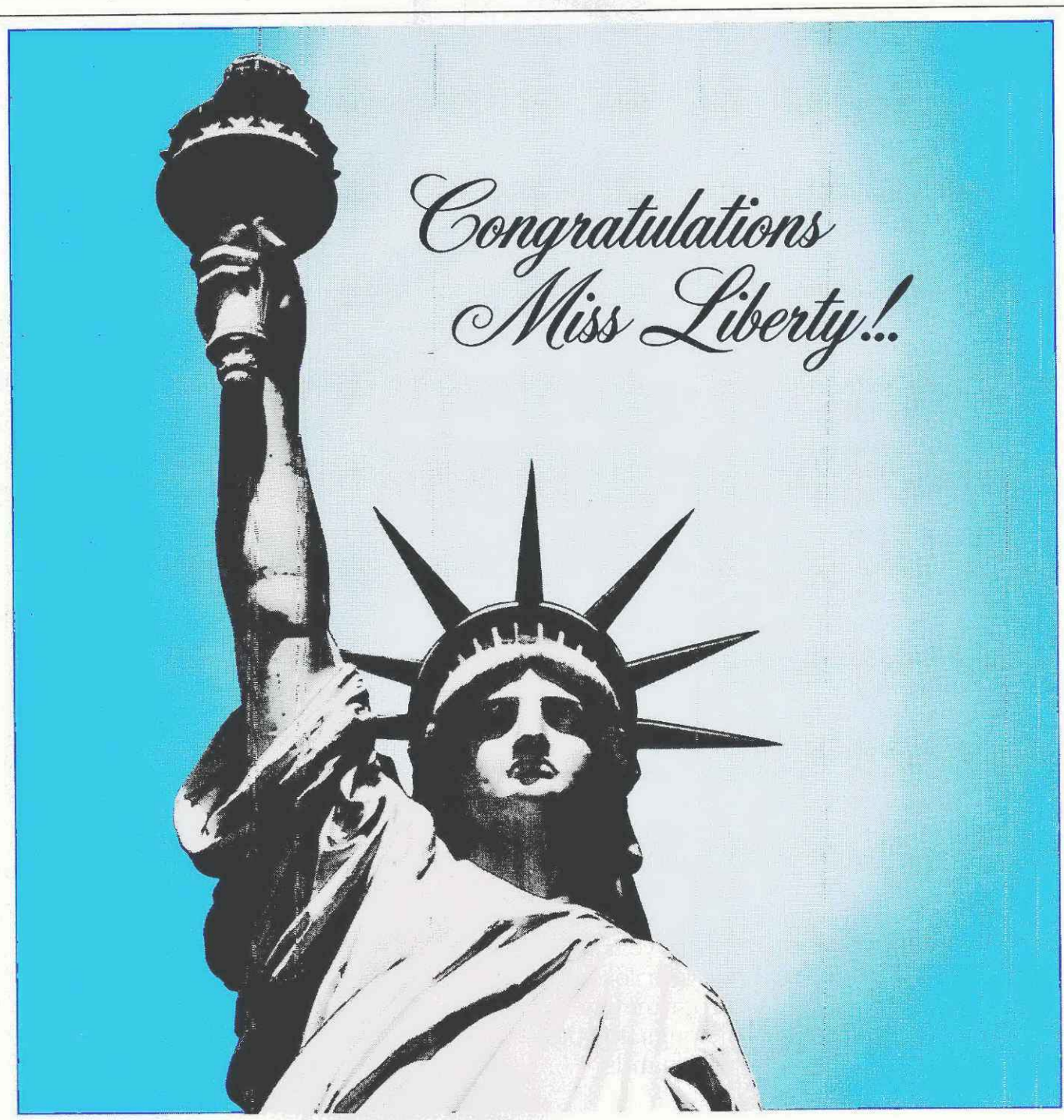
In addition, the patient's health insurer, seeking a second opinion about care, sometimes asks LEIR to review the findings of previous rehabilitation counselors, Dr. Sawicki says.

And, patient's families have sought help in arranging adequate home care when the patient leaves a rehabilitation center.

In one case, LEIR was asked to re-evaluate the brain injuries suffered by an electrical parts assembler who fell off a ladder while on the job. The employee had been treated and returned to the job, but his supervisor had noticed that, while the worker appeared to be fine, he couldn't perform the same detailed handwork he formerly did.

LEIR identified remaining brain damage that wasn't grossly obvious initially, Dr. Sawicki says. The employee was re-trained for a job compatible with his existing capabilities.

Group health insurance plans—and, in at least one instance, a state Medicaid group—have so far covered LEIR's evaluation in all cases in which they were asked to, Dr. Sawicki says. ■



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Tort law must change to end insurance crisis: Researcher

By STEPHEN TARNOFF

NEW HAVEN, Conn.—Only by "a radical reconceptualization and redefinition of substantive standards of tort law" can the insurance crisis be solved and insurance offered more widely, says a Yale University researcher.

By using the existence of third-party liability insurance to justify expanding the definition of tort liability, courts have contributed greatly to the insurance crunch, says George L. Priest, director of Yale's program in civil liability.

The result, he notes, has been higher premiums, higher deductibles, lower policy limits, more exclusions and withdrawal of coverages.

The purpose of the 70-page working paper, entitled Modern Tort Law and the Current Insurance Crisis, is to identify the general sources of the insurance problem.

The paper, which still is being revised, seeks to explain the reasons behind the increase in insurance premiums, the increasing refusal of insurers to write insurance, and how courts have actually reduced the availability of insurance while attempting to extend it to a greater segment of society.

"By compelling greater and greater levels of provider third-party insurance, courts have undermined the insurance function and have generated less total insurance coverage rather than more," the study says.

"The source of the insurability crisis is the failure of our courts to comprehend the insurance consequences of expanded third-party liability."

Mr. Priest, a law professor, notes that since the early 1960s, modern tort law has steadily expanded liability for injuries.

Among the reasons for finding greater liability are that it would give manufacturers incentives for preventing injuries and also provide insurance for injuries that cannot be prevented.

Mr. Priest believes it is the notion of providing insurance for unpreventable losses that is the most crucial for understanding the current insurance crisis.

Theoretically, providers are in a much better position than consumers to obtain insurance because they can enter into one insurance contract covering all consumers, compared with the thousands of such contracts consumers would need, he says.

Providers can, in turn, pass the insurance premium along to consumers in the price of the product.

This, in effect, would provide coverage to people who might not otherwise obtain first-party coverage, in particular the poor or low-income among the consuming population.

However, this emphasis on third-party liability insurance, combined with the expansion in tort liability and damage awards, has not worked as courts have contemplated—resulting in the insurance crisis, Mr. Priest contends.

Mr. Priest says the availability and price of insurance is determined by how narrowly pools of risk can be drawn by insurers.

This is done more easily in the first-party insurance context, where insurers can narrow the members of the pool based on their individual characteristics as well as through the use of deductibles and co-insurance.

However, third-party insurers do not have the option of significantly narrowing the risks they insure—i.e., the consumers that purchase the manufacturer's product and eventually may sue.

As a result, as tort liability and damages have expanded within the context of the availability of third-party liability insurance, insurers have been less able to define narrow risk pools, causing premiums to rise and insurance to become less available.

One result of the increased reliance on third-party insurance is that levels of recovery substantially exceed levels of recovery that would take place under a first-party method, the study adds.

"Third-party insurance administered through the tort system provides injury insurance in far greater amounts than consumers are willing to purchase in first-party health, disability or life insurance markets," it says.

Continued on next page

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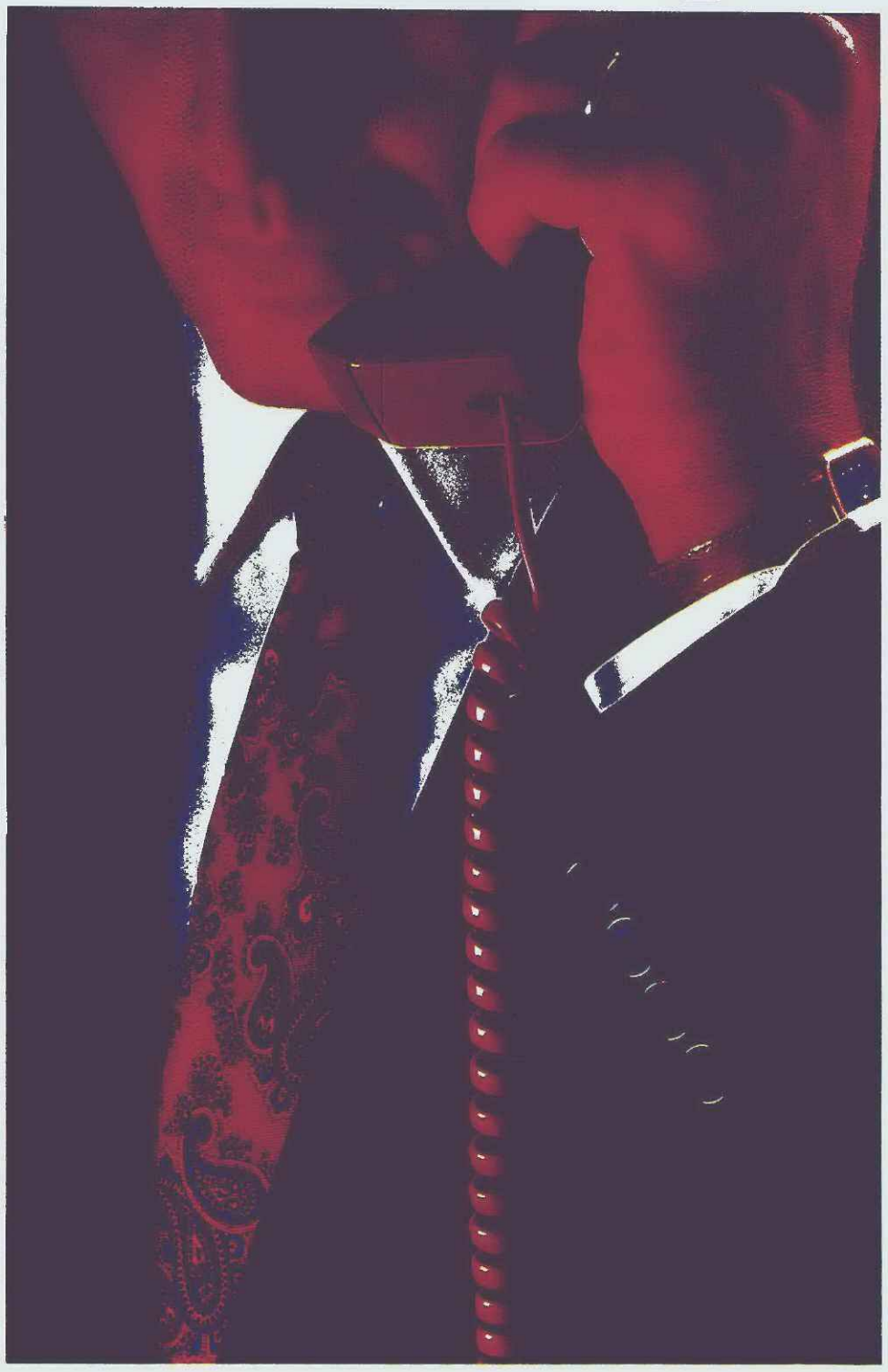

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Tort law research report

Continued from previous page

Mr. Priest estimates that awards for pain and suffering and other non-pecuniary losses are commonly believed to comprise 30%-40% of tort damages, with the most detailed study of awards showing they comprise 47.2% of total tort damages.

However, policyholders do not purchase insurance for non-pecuniary damages in the first-party context.

"Thus. . .the shift from first-party to third-party insurance sources alone increases insurance levels in the range of 47%," he says.

Mr. Priest says that under a third-party insurance system, the plaintiff does not engage in the difficult decision about the appropriate level of medical treatment that is typical in every first-party insurance context.

Because all first-party insurance claimants must pay a substantial portion of medical costs, they must consider very carefully which of a set of medical procedures is likely to be most effective as well as whether and to what extent extended care is needed.

"In contrast, the tort plaintiff loses nothing by requesting (or asserting as essential) all available advanced methods of medical treatment, regardless of cost," Mr. Priest says.

"Each of the changes in coverage (lowering limits, increasing deductibles and premiums, etc.) represents an effort by insurers to fight off the effects of modern tort law in order to extend insurance availability most broadly," the study says.

For example, "The adoption of claims-made policies is a way to salvage some form of insurance availability in the face of extreme uncertainty over risks" involving cumulative disease cases.

Ultimately, when insurers no longer can isolate low-risk members, they withdraw from the market altogether, he adds.

For insurance buyers such as corporations and municipalities, Mr. Priest notes, the response has been a greater movement toward self-insurance, creation of captives, the formation of industrywide mutuals or "going bare."

Some providers of products and services, however, will find it more feasible to narrow the segments of consumers who use their products, to pass on to customers the increases in premiums or self-insurance costs or to withdraw from the market.

Mr. Priest says that the biggest losers from the expansion of tort liability and the shift from first to third-party insurance are the poor.

"It is clear that the increase in market and self-insurance costs leads to increases in the price level of virtually all commodities," he says, in some cases pricing the poor and low-income out of the market for the product.

"Increases in product prices shrink the purchasing dollar and, in proportionate terms, shrink it more severely for the poor," he says.

He adds that the poor are harmed even if they are able to continue to pay the insurance-enhanced price of products, because they are more likely to be paying a premium that exceeds the risk they bring to the pool under third-party rather than first-party coverage.

"No one today would seriously propose that all homeowners pay the same fire premium regardless of home value or that all drivers pay the same auto premium regardless of car value," he says.

"No one would argue that all individuals pay the same disability premium regardless of expected income."

"Our modern tort law regime, however, forces all consumers to pay the same third-party premium for coverage for losses leading to injury, disability and death."

To solve the crisis, Mr. Priest recommends that courts must recognize that third-party provider insurance is a very unattractive element of social policy, compared with first-party insurance bolstered by income maintenance and health care for the poor.

"The expansion of tort liability in modern tort law has not only reduced the availability of insurance, of products, and of services, it has diminished purchasing power and diminished it more seriously for the poor and low-income than for the high income," he says.

"Whatever other grounds there may be for further expansion of liability, providing insurance to victims ought not to be among them. Indeed, there are very strong reasons suggesting that consumers would benefit from a retraction of liability." ■

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This situation contrasts sharply with last year's chaos, when property programs were stung by a monolithic market reaction that propelled program costs skyward.

Even desirable property risks or those with excellent loss experience did not escape ballooning costs and restrictive terms as a tensed market failed to distinguish their quality.

Now, however, the character of an individual risk is becoming important again. Insurers are staunchly hewing to basic underwriting principles underlying the specific risks they handle best. Loss experience, level of protection, quality of construction, loss control programs—as well as class of risk—are subjects worth bringing to the table.

Reviews of property insurance programs are, therefore, timely. Judgment and negotiation again are becoming factors in risk acceptance.

It is critical to the process to match risk characteristics to the current philosophy of the individual carrier. In effect, the broker must think like a "surrogate underwriter" in preparing the submission. The quality of the submission as well as the broker's experience and reputation are key factors in the underwriter's decision.

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Governments see the need for tort reform

By STEPHEN TARNOFF

OAK BROOK, Ill.—More than eight out of 10 local governments believe that modifying liability laws and the court system are "very important" ways to deal with liability insurance problems, a recent study says.

And, almost seven out of 10 want to restore some form of immunity from lawsuits for governmental entities, and more than four out of 10 believe in increased use of intergovernmental risk pooling.

Fewer than 25% said other proposals—including increased state government regulation of insurance rates and coverages, creation of government-owned insurance companies, government programs requiring insurers to sell liability insurance to government entities, and voluntary programs to help local governments find liability insurance—were very important.

The survey was conducted by the All-Industry Research Advisory Council, an insurer-sponsored public policy research group, in cooperation with the Public Risk & Insurance Management Assn.

About 3,600 governments and 100 liability insurers were questioned about their problems obtaining liability insurance and their concerns about the court system.

Government officials and insurers strongly agreed that liability insurance has become less available and more costly during the past two years, and that problems with the legal system were the main cause.

Insurers ranked joint and several liability as the most needed reform, followed by statutory limitations on contingent fees for attorneys.

More than 70% of local governments agreed it was "very important" to eliminate joint and several liability, followed by discouraging frivolous suits, eliminating or restricting punitive damages and limiting non-economic damages.

The survey also found that 18% of the 66 insurers writing general liability insurance that responded had dropped out of the government liability market before 1985, with most dropping out before 1983.

About 12% of 679 local governments that responded reported that one or more general liability policies had been canceled during 1985, compared with 3% in 1984 and 1% in 1983.

In addition, 29% reported that a general liability policy was not renewed at the end of a contract period during 1985, compared with 6% in 1984 and 1% in 1983. ■

Benefits under Longshore Act up 1.69%

By JERRY GEISEL

WASHINGTON—Benefits payable to workers covered under the federal Longshoremen's and Harbor Workers' Compensation Act are rising.

Each Oct. 1, a new weekly maximum benefit is set, based on 200% of the current national average weekly wage.

For workers who become disabled after Sept. 30, the maximum weekly benefit for total disability will be increased to $605.32, up 1.69% from the former maximum of $595.24.

The federal Longshore Act, which went into effect in 1928, covers more than 500,000 workers.

Ippolito joins PBGC

The Pension Benefit Guaranty Corp. now has a chief economist for the first time in its 12-year history.

Richard A. Ippolito, 38, a former Labor Department economist and researcher, joined the PBGC this month to analyze alternatives to the current PBGC termination insurance program.

For example, Mr. Ippolito will examine the concept of risk-related premiums in which the premiums charged by the PBGC would be based on the financial condition of employers' pension plans.

Currently, the PBGC charges all employers that have defined benefit pension plans a flat annual premium of $8.50 per plan participant.

The premium income is used to guarantee workers' pension benefits when pension plans fold and cannot provide the benefits that were promised.

Mr. Ippolito also will examine whether commercial insurers should be allowed to compete with the Pension Benefit Guaranty Corp. in providing termination insurance to employers.

Previously, Mr. Ippolito was chief economist for pensions and director of policy and research with the Labor Department's Pension and Welfare Benefits Administration.

Mr. Ippolito, who formerly was a staff economist with the Federal Trade Commission and the Justice Department, holds a Ph.D in economics from the University of Chicago.

Meanwhile, the PBGC has a new general phone number: 202-778-8800.

The new phone number for the agency's office of communications and public affairs is 202-778-8840.

FIA chief sworn in

Harold T. Duryee was sworn in this month as the new administrator of the Federal Insurance Administration following Senate confirmation.

Mr. Duryee joined the FIA in March 1984 as special assistant to the administrator.

More recently, he has been FIA executive deputy administrator following the resignation of FIA chief Jeffrey Bragg, who left government for private practice earlier this year.

Mr. Duryee, active in Republican Party politics, also managed the claims service division at Nationwide Insurance Co.'s Northern Ohio regional office.

Meanwhile, in another FIA development, Congress has approved legislation to continue the agency's national flood and crime insurance programs through Sept. 30, 1987.

The national flood insurance program has about 2 million policyholders, while the crime insurance program has about 36,000 policyholders.

OSHA approves plan

Indiana's job safety and health plan received final approval from the federal Occupational Safety and Health Administration.

Final approval means that the federal OSHA relinquishes its standards and enforcement authority in the areas covered by Indiana's program.

washington

The Indiana plan covers safety and health in both private industry and state and local governments.

However, federal OSHA will retain its inspection enforcement authority in the private-sector maritime industry and hazardous-waste disposal facilities designated as Superfund sites by the Environmental Protection Agency.

In addition, federal workers in Indiana remain covered by the federal agency.

Indiana is the 12th jurisdiction to receive final approval from OSHA.

The other jurisdictions are Alaska, Arizona, Hawaii, Iowa, Kentucky, Maryland, Minnesota, Tennessee, Utah, Virgin Islands and Wyoming. ■

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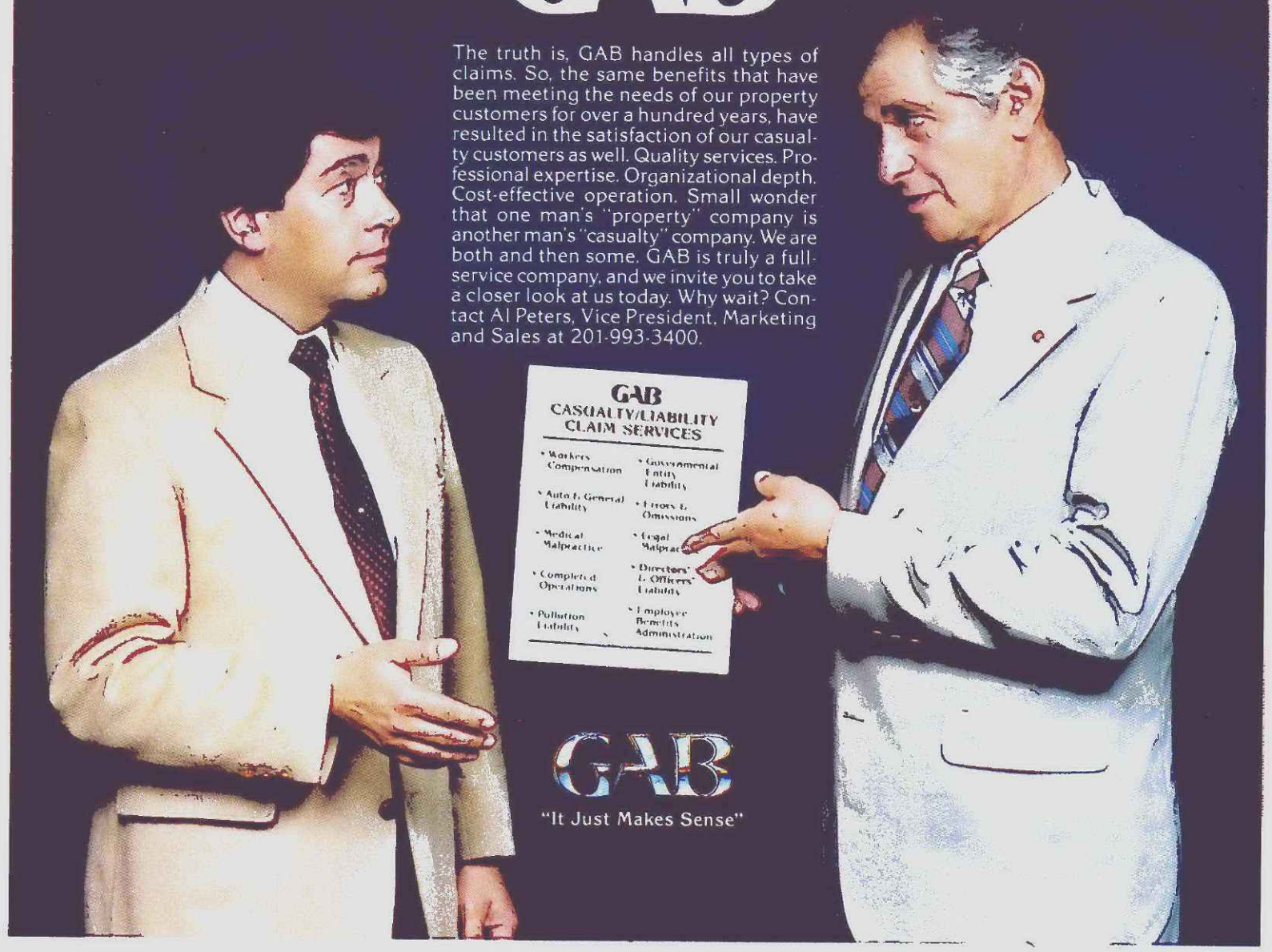

Senate debate of Risk Retention Act

Editor's note: The following is the text of the Senate debate on Oct. 6, 1986, preceding the passage of the Risk Retention Amendments of 1986.

The Senators who addressed the bill included: John C. Danforth, R-Mo.; Wendell H. Ford, D-Ky.; Albert Gore Jr., D-Tenn.; Slade Gorton, R-Wash.; Ernest F. Hollings, D-S.C.; Robert W. Kasten Jr., R-Wis.; Frank R. Lautenberg D-N.J.; John D. Rockefeller IV, D-W.Va.; and Alan K. Simpson, R-Wyo.

Where paragraphs have been edited out, three stars appear. Where sentences have been edited out, three periods appear.

Sen. Kasten: Mr. President, today I am pleased to present to the Senate an amendment in the nature of a substitute for the House amendment to S. 2129, the Risk Retention Amendments of 1986. The amendment which I am presenting to the Senate today has been agreed to by the chairman and ranking minority member of both the Senate Committee on Commerce, Science and Transportation and the House Committee on Energy and Commerce. This amendment also has been agreed to by the principal proponents and sponsors of this legislation in both the House and the Senate.

S. 2129, which I introduced with Sens. Danforth, Hollings and Rockefeller as original co-sponsors, amends the Product Liability Risk Retention Act of 1981 in order to make it easier for business, associations, professionals, governmental entities and other organizations to form collective purchasing groups and self-insurance groups for liability insurance. This measure was reported favorably by the Senate Commerce Committee last spring. Additional co-sponsors are Sens. Pressler, Gore, Sasser, Kassebaum, Simon, Inouye, Weicker, Sarbanes, Heinz, Abdnor and Nickles.

Mr. President, on July 17, 1986, S. 2129 was adopted by the Senate with an amendment to the nature of a substitute by Sens. Gorton, Ford, Danforth, Hollings, Gore, Rockefeller and myself. This amendment assures the formation and operation of risk retention groups and purchasing groups while permitting legitimate regulatory oversight by state officials who are concerned that these groups operate in a way which is financially sound and also fair.

Subsequently, on Sept. 23, 1986, the House passed its own version of this legislation, H.R. 5225. The House then substituted its text for the Senate-passed bill and returned that bill to the Senate for further consideration.

S. 2129 as amended by the House is very similar in content and purpose to the original measure passed by the Senate. The House language expands upon and clarifies further the intent of the Senate bill. As a consequence, the amendment I am presenting to the Senate today adopts the House language with only a few substantive changes as well as several clarifying and technical amendments.

I would like to make several comments about the language of this amendment. First, I would like to express my concern, as an original sponsor of this legislation, about the House provision dealing with financial responsibility, which has been retained in this amendment. This House provision states that, subject to the provisions set forth in section 3(a) (4) of the existing act prohibiting discrimination against a risk retention group, nothing in the act should be construed to pre-empt the authority of any state to specify acceptable means of demonstrating financial responsibility where the state has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities.

The Senate bill contained no similar provision. However, in a colloquy with Sen. Gorton, I indicated agreement with his understanding that the Risk Retention Act was not intended to pre-empt state regulatory schemes that require proof of insurance or financial responsibility in order to obtain a license or permit to engage in certain activities.

The House has made this continuing state authority provision an explicit provision of the bill. The House bill further provides, and this is very helpful, that a state's authority to impose or apply financial responsibility requirements is subject to the general statutory prohibition that a state cannot impose any discriminatory requirements on a risk retention group. This is very important because the purpose of this legislation is to broaden and strengthen the Risk Retention Act—not to authorize States to impose restrictions prohibiting the legitimate formation and operation of risk retention groups and purchasing groups. While states may impose justified requirements regarding financial responsibility for a license or permit to engage in specified activities, enactment of statutes by states or the application of existing laws which are only intended to prohibit, or which unjustifiably prohibit, the operation of a risk retention group would not be authorized. Such action would be contrary to the plain meaning and intent of this provision.

Let me add just one further comment on this point. A large risk retention group insuring homebuilders has been established and has been in operation for approximately four years. That group has been subjected to some inquiries and litigation by state officials who were hostile to the Risk Retention Act. In addition, such professional groups as the nurse-midwives have been seeking to establish a risk retention group. I would hope that states would not use this financial responsibility authority to attempt to curtail the beneficial Homebuilder Risk Retention Group Program and the efforts of such groups as the nurse-midwives, or take any other action that is intended to prohibit or discourage the formation and operation of other legitimate and financially sound risk retention groups.

At the same time, I concur with the statement made by Sen. Gorton on July 17, 1986, during Senate floor consideration of S. 2129. . . .As Sen. Gorton explained, under this act, these state financial responsibility requirements would remain applicable where a state has established a regulatory requirement of proof of financial responsibility before an individual can engage in certain hazardous activities such as applying pesticides. In addition, any state law requirements that specify the amount of insurance coverage that must be maintained by a person before engaging in an activity would remain applicable.

These same considerations apply with respect to the authority of states to specify acceptable means for managing the liability of the state or its subdivisions. The House bill contained language indicating that this measure does not pre-empt state authority with respect to the management of the liability of the state or any agency or subdivision of the State. This language has been dropped as unnecessary, because this state authority, as delineated in the House bill, is not affected by this legislation.

Mr. President, both the Senate and House bills contain provisions defining enforcement authority of non-chartering states. Because the House language makes explicit the intent of the Senate bill and clarifies further the scope of that authority, the House language has been retained in this amendment.

With respect to this authority, it should be noted that both the House and Senate bills provide that a state insurance commissioner may exercise any powers available under state law to investigate the conduct of a risk retention group and to enforce provisions of state law not pre-empted under the Risk Retention Act. This would include but is not limited to issuing subpoenas investigating market conduct or the financial condition of a group as well as actions for the failure to register or file financial statements or to respond to a request for documents. A state insurance commissioner would be authorized to rely on state procedural law and regulations in connection with any such inquiry or proceeding.

However, both the Senate and the House bill provide that if a state insurance commissioner seeks to enjoin a group because of conduct constituting deceptive, false, or fraudulent acts or practices, any

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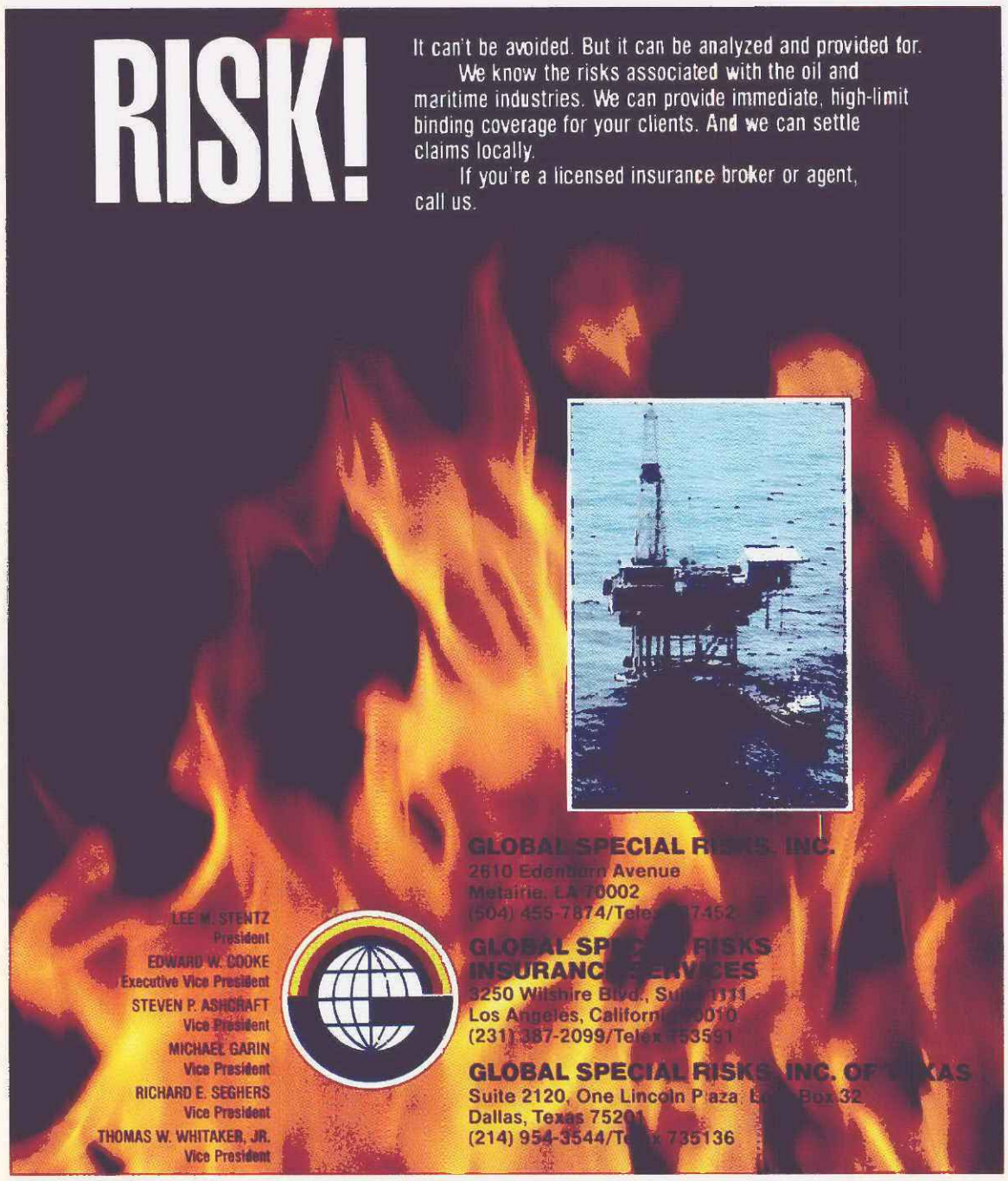

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such injunction must be obtained from a court of competent jurisdiction. This will assure that any such decision to prohibit a group from operating will be made by an independent judicial officer.

The House bill reorganizes and attempts to clarify further the state enforcement authority preserved by S. 2129. In so doing, the House bill preserves the key provision of the Senate measure that requires that any action to enjoin a risk retention group because of deceptive, false or fraudulent acts or practices, must be made by court order. In addition, the House bill preserves the requirement of the Senate measure that an action to enjoin a risk retention group because it is in a hazardous financial condition or is financially impaired must be by court order.

Sen. Kasten

The House committee report explains that States retain authority to initiate administrative proceedings, as opposed to judicial proceedings, against a risk retention group for any violation of state law not pre-empted by the Risk Retention Act, except an action to enjoin certain specified conduct such as deceptive, false, or fraudulent acts or practices or other activity which I described previously. . . .

In any event, however, if a state seeks to impose administrative sanctions without seeking to enjoin future violations, it is clearly intended that the state be prohibited from initiating or maintaining discriminatory enforcement actions against a risk retention group or a purchasing group. This limitation is fundamental to the policy of the Risk Retention Act. As we did in the 1981 act, we have sought in this legislation to exempt risk retention groups and purchasing groups from burdensome and duplicative laws that would hinder their operation. At the same time, we have sought to preserve for the state insurance commissioners the necessary powers to ensure that risk retention groups can be prohibited from engaging in any false, fraudulent, or deceptive conduct or continuing in operation if they are not in a sound financial condition.

The same concerns apply to state enforcement authority against purchasing groups. The House bill states that the act does not affect the authority of a State to make use of any of its powers to enforce the laws of such state with respect to which a purchasing group is not exempt under the act. It is essential that states recognize the legitimacy of these groups and utilize their powers in an even-handed and non-discriminatory manner. I believe that the House language has been shaped to achieve that goal and therefore I urge its adoption.

At the same time, however, because of our continuing concern about maintaining the delicate balance between state authority and the policy of the act, we have added an additional reporting requirement to this measure.

Our amendment retains the House language requiring the Secretary of Commerce to report to Congress in 1987 and 1989 concerning implementation of the act; however, a provision has been added requiring the Secretary to report on his views concerning the extent to which risk retention groups and purchasing groups have been discriminated against under state laws, practices, and procedures contrary to the provisions and underlying policy of the Risk Retention Act.

This provision reflects our concern that the states not abuse their legitimate authority to discriminate against these groups by obstructing their operation and formation. This concern is consistent with the underlying policy of this legislation as reflected in sections 3(a) (4) and 4(a) (8) of the original 1981 act. These provisions protect risk retention groups and purchasing groups, as well as their members, from such discrimination.

Finally, I would like to note that a number of other minor clarifying and technical amendments have been agreed to, including a change in the House language pertaining to the ownership of a risk retention group. The purpose of this change, which is consistent with the language of the House report, is to leave no uncertainty that any existing and future risk retention groups that have indirect member ownership may operate. This provision preserves the requirement that there be an identity among the owners, members, and insureds of the risk retention group.

Mr. President, as I have stated repeatedly, this measure is not intended as a cure-all for the liability insurance problems facing us today. Nonetheless, expansion of the Risk Retention Act should provide some immediate relief for those affected by the insurance crisis by providing insurance alternatives that were not previously available and by promoting competition. Of course, this is a matter of particular concern for small businesses in this country. It should be noted that this legislation has been endorsed by the 1986 White House Conference on Small Business, which included congressional approval of this measure in its final recommendations.

As a consequence, I am very pleased that we have reached agreement on this amendment in the nature of a substitute. I wish to commend all my colleagues in this body and the House, who have been involved in this process, as well as their staffs, and the staffs of the House and Senate committees. . . .

Sen. Ford: Mr. President, I support the passage of the Risk Retention Amendments of 1986 and am pleased that many of my original problems with the legislation reported from the Commerce Committee have been resolved.

Mr. President, I opposed this legislation during the Commerce Committee consideration because I felt that consumer protection was being overlooked in the hasty congressional attempt to ease the insurance crisis.

* * *

I was pleased as a primary cosponsor of the substitute amendment eventually adopted by the Senate that many of my concerns were met.

* * *

Therefore, I am pleased to support this Senate amendment basically encompassing the House version of the legislation.

It is my hope that this act will assist those seeking alternatives to the traditional marketplace. Supporters of this legislation include the: American College of Nurse Midwives; National Restaurant Assn.; National Assn. of Wholesalers/Distributors; Risk & Insurance Management Society; Home Owners Warranty Corporation; U.S. Conference of Mayors; National Conference of State Legislatures; The League of Cities; American Trucking Assn.; and the National Assn. of Insurance Brokers. The White House Conference on Small Business listed passage of this bill as one of its final recommendations.

One additional note, as an advocate of congressional oversight, I am extremely pleased that reports

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Senate debate

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will be submitted to Congress concerning the implementation of the act. Based on this report, the respective Commerce Committees should, in my opinion, conduct oversight hearings to assess the contribution of this act toward resolution of insurance affordability and availability problems; the extent to which the regulation and preemption established by the act is satisfactory; and the extent to which the public is protected from unsound financial practices and other commercial abuses involving risk retention and purchasing groups. In addition, the committees should assess any instance in which these groups have been discriminated against under state laws, practices, and procedures contrary to the policy and provisions of this act.

Mr. President, I support this legislation, now considerably changed from the legislation reported from the Senate Commerce Committee. I believe the additional provisions will help to assure adequate oversight for the consumer but will retain the needed flexibility to facilitate the formation of these groups.

Sen. Danforth: Mr. President, I rise in support of the amendment being offered by Senator Kasten as a substitute for the House amendment to S. 2129, the Risk Retention Amendments of 1986.

* * *

One additional point should be clarified, Mr. President. The House report on the Risk Retention Act states that the word "operations" included in the definition of liability extends to the liability of commercial fishing operations conducted on an independent contractor basis. This is consistent with the intent of the Senate bill as to the scope of liability insurance coverage under the act. In addition, and it is my understanding this reflects the intent of the House, the word "operations" includes other maritime operations such as dredging and barge operations conducted on an independent contractor basis.

Mr. President, the need for this legislation is urgent. Millions of Americans are affected by the high cost and unavailability of liability insurance. This situation is unacceptable to our constituents and it should be unacceptable to the Senate as well. S. 2129 is not a complete solution to this problem, but, by creating new alternatives for liability coverage, it represents an important step toward alleviating the problem. S. 2129 has the support of manufacturing groups, municipalities, nurse-midwives, insurance brokers, and many other organizations. . . .

I would like to commend Sen. Kasten, Sen. Gorton, Sen. Hollings, Sen. Ford, and Sen. Rockefeller, along with all the other members of the House and the Senate who have worked to reach agreement on this amendment to S. 2129. I urge my colleagues to join me in concurring in the House amendment to S. 2129 with the further amendment offered by Senator Kasten.

Sen. Gorton: Mr. President, the substitute amendment before us today strikes a delicate balance between the need for a mechanism to permit certain groups to provide insurance coverage where it might not otherwise be available through the formation of risk retention or purchasing groups, and the very legitimate regulatory concerns of the states. We hope we have found the proper balance, but if we have not, we will have the benefit of a study by the Department of Commerce to indicate where corrections might be needed in the structure of the legislation.

I am particularly pleased, Mr. President, that language contained in the House bill recognizing the right of a State to require proof of financial responsibility before the undertaking of certain activities and to prescribe the manner for meeting that requirement is retained in this amendment. As I stated on the floor at the time of the passage of the Senate bill, requirements of financial responsibility are usually the result of a state's concern about third parties who might be injured by the insured's activities. In the state of Washington, for instance, many activities require prior proof of insurance by a carrier admitted to do business in the state. Such laws would continue to be valid notwithstanding the fact that they might preclude participation in an out-of-state risk retention group for the purpose of meeting that requirement.

Mr. President, the Senator from Wisconsin (Mr. Kasten), mentioned an existing risk retention group and one that is likely to be formed if this bill is enacted in his discussion of the bill's financial responsibility provision. He stated that he hoped that the states would not use their authority with respect to financial responsibility to curtail the activities of these groups. I would like to note that that admonition to the states should not be taken to imply that a state cannot impose financial responsibility requirements on the members of those groups. If the state chooses to impose such a requirement, however, it may not make unfair distinctions between risk retention groups and conventional insurers.

Mr. President, the bill before us today is vastly different from the bill reported by the Commerce Committee. Although I have reservations about the process we have crafted, I believe that, on balance, those groups which will seek to use it deserve the opportunity to try to respond to the problems of availability and affordability of insurance in the conventional market through the mechanism of a risk retention or purchasing group. I hope that the concerns many of us have expressed in the course of this debate will prove to be unfounded and we will have provided a meaningful response to the problems of so many of our constituents.

Sen. Hollings: Mr. President, I am extremely pleased that the Senate is today concurring to the amendment of the House to S. 2129, the Risk Retention Amendments of 1986, with an amendment. . . .As an original cosponsor of S. 2129, I fully endorse the intent of the legislation. . . .

The hearings held on Feb. 19 and March 4 of this year by the Senate Commerce Committee on the availability and affordability problems faced by insurance buyers underlined the fact that many entities

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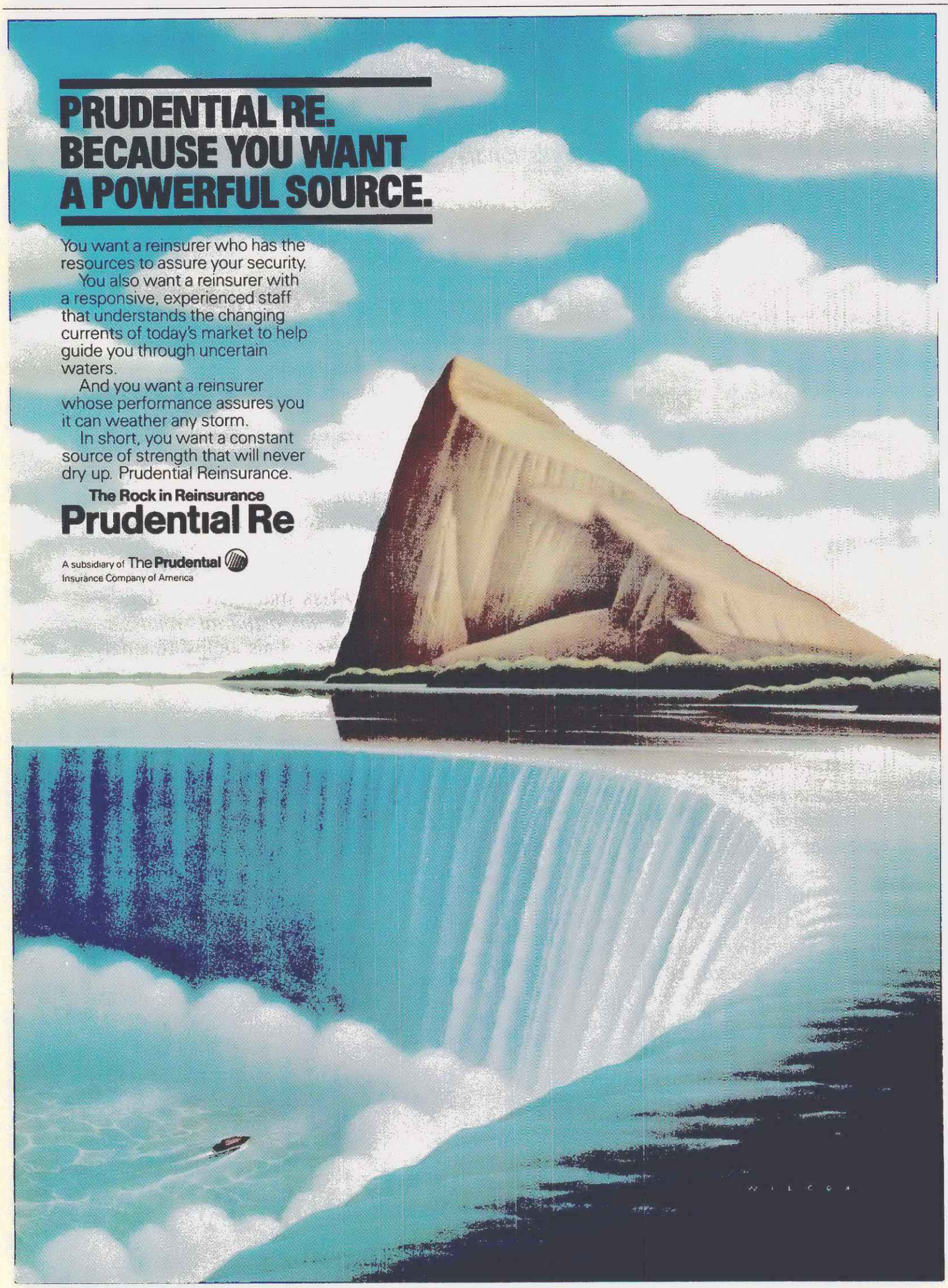

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are indeed facing an insurance crisis. I certainly agree with the testimony of the National Assn. of Insurance Brokers at the March 20 hearing specifically on S. 2129, that the conventional marketplace has not functioned as well as it normally does. S. 2129 will create a safety valve for those who face the prospect of having to continue operations with no insurance at all.

* * *

At the Commerce Committee hearing, witnesses noted that the insurance crisis has arisen during a period of falling interest rates, prior to which competing insurance companies had been underpricing their product in order to maximize cash flow and enhance investment income.

Sen. Hollings

The committee report accompanying S. 2129 discusses the problems experienced by the insurance industry which precipitated the crisis: "When interest rates began to fall, companies were forced to increase premiums because investment income was no longer compensating for underwriting losses. This practice of cash-flow underwriting was linked directly to the current crisis."

Mr. President, the more I have studied this issue, the more convinced I am that the insurance industry itself is responsible for the large increases in premiums. Various commentators confirm that the crisis is of the insurance industry's own making. For example, the editors of Business Week stated that "mainly the industry shot itself in the foot." A study by the National Assn. of Attorneys General Ad Hoc Committee on Insurance recently concluded that "the cyclical nature of the industry, and not any changes in tort claims, is largely responsible for the current crisis." Similarly, some insurance industry executives have recently remarked: "Insurance industry leaders must stand up and squarely accept the responsibility for a crisis that is wholly their fault."

In any case, I believe that expansion of the Risk Retention Act is an appropriate response to this insurance crisis. If the insurance marketplace is not supplying insurance at an affordable rate, this law will be in place to be utilized by any entities engaged in similar or related businesses or activities. Five years ago, Congress enacted the Product Liability Risk Retention Act of 1981, which was reported by the Commerce Committee as S. 1096. This bill was enacted to facilitate the ability of product manufacturers and sellers to purchase product liability insurance on a group basis and to establish self-insurance coverage on a group basis for product liability risks. Risk retention legislation first had been considered by the committee as a response to the high cost and unavailability of product liability insurance during the insurance crisis of the mid-1970s. The cyclical nature of the insurance market has resulted in another crisis in the mid-1980s. The policy underlying the 1981 act is applicable to other lines of liability coverage and the broad scope of the current crisis warrants its expansion to facilitate the formation of risk retention and purchasing groups beyond that of product manufacturer and seller groups. It is my hope that the act will be utilized, if necessary, by the cities, city officials, charity groups, professional groups, businesses involved in environmental cleanup efforts, commercial fishing operations conducted on an independent contractor basis and other maritime operations, and many more entities. Small businesses have shown particular interest in and support for this legislation.

* * *

The House recently adopted the main provisions of the bill which passed the Senate. The principal differences which the Senate will agree to with its substitute amendment are as follows:

Hazardous financial condition.—The House bill contains additional language providing that a hazardous financial condition is based on both the present and reasonably anticipated financial condition of a risk retention group and a group is in hazardous financial condition if it is "unlikely to be able" to meet its obligations to policyholders and other creditors.

Ownership.—Under the House bill, membership in a risk retention group is restricted to persons who have an ownership in the group and membership is restricted to persons who are provided insurance by the group. In addition, the Senate amendment will add language clarifying that such a group can have as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and which has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group. This is intended to clarify that an existing group, which is owned by the Home Owner's Warranty Corporation, is brought within the new description of a risk retention group. The corporation is, in turn, owned by the many homebuilders who are members of this group.

Reinsurance.—Under the House bill, reinsurance may be offered only to a risk retention group whose risks are similar or related to the group which provides reinsurance coverage.

Purchasing group definition.—A purchasing group as defined in the House bill may purchase insurance "only to cover (the members') similar or related liability exposure."

Risk retention group exemption from State law.—The House bill states that the exemption of a risk retention group from State law applies to "laws governing the insurance business" pertaining to insurance coverage provided by risk retention groups and other insurance-related services.

Financial examination.—The House bill provides that financial examination shall be coordinated to avoid unjustified duplication and unjustified repetition.

False, deceptive or fraudulent acts or practices.—The House bill provides that a risk retention group must comply with any State law regarding false, deceptive or fraudulent acts or practices except that if a state seeks an injunction to prohibit such conduct, the injunction must be made by court order.

Purchasing group notice requirements.—The House bill requires a purchasing group to give notice to the insurance commissioner of each state in which it intends to do business. This notice must identify the state in which the group is domiciled, the lines and classifications of liability insurance it intends to offer, the name of the insurance company providing insurance, and the insurer's State of domicile. A newly formed purchasing group is also required to register with the insurance commissioner of each State in which it does business and designate the commissioner as its agent for service of process in any legal proceedings against the group.

State enforcement authority.—The House bill provides that subject to the requirement that any action to enjoin false or deceptive conduct, must be pursuant to a court order, nothing in the act shall be construed to effect the authority of any state to make use of any of its powers to enforce the laws of that state to which a risk retention group is not exempt under this act.

Insurance company ownership.—The House bill provides that nothing in the Risk Retention Act shall be construed to effect the authority of any state to regulate or prohibit the ownership interest in a risk retention group by an insurance company other than in the case of insuring an insurance company's own liability risks.

State enforcement authority re purchasing groups.—The House bill contains a provision stating that "nothing in this act shall be construed to effect the authority of any state to make use of any of its powers to enforce the laws of that state with respect to which a purchasing group is not exempt under this act."

Unlawful policy terms.—The House bill prevents any insurance policy provided by a risk retention or a purchasing group from providing coverage that is

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Senate debate

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prohibited by a state statute or that has been declared unlawful by the highest court of the state whose law applies to that policy.

Financial responsibility.—The House bill contains a provision that, subject to the provision prohibiting discrimination against the risk retention group, nothing in the act shall be construed to pre-empt any state law that specifies acceptable means for demonstrating the financial responsibility where such a requirement is made a condition for obtaining a license or permit to undertake specified activities. The Senate has agreed to adopt this provision which was in the House bill. It is important to note that although the states may impose these financial responsibility requirements, they cannot do so if the purpose or intent of these laws is to discriminate against the formation or operation of risk retention group or purchasing group. The House Committee Report more thoroughly explains this limitation on State authority.

Commerce Department reports.—The House bill requires that the Secretary of Commerce shall submit reports to Congress concerning the implementation of the Risk Retention Act. The Senate amendment requires that any discrimination under state laws, practices, or procedures must be reported to the Congress.

In addition, this amendment does not contain the provision in the House bill which provides that nothing in the act limits the authority of a state to specify acceptable means for managing the liability of municipalities. States already have this authority. Also the definition of "financial impairment" from the Senate passed bill has been dropped as this is defined within State insurance law.

Mr. President, the insurance industry appears to be coming out of the recent crisis. The General Accounting Office testified before the Senate Commerce Committee that the underwriting cycle has turned again and "is now moving in a positive direction." The industry is projecting substantial net gains over the next 5 years. The GAO has stated that the property/casualty industry will enjoy "an expected net gain before taxes of more than $90 billion over the years 1986-1990."

In any case, as the Department of Commerce has indicated, "the knowledge that substantial insurance buyers can create their own alternative insurance mechanism will be an incentive to commercial insurers to avoid sharp peaks and valleys in their costs."

Mr. President, I urge the Senate to expeditiously pass this needed and important legislation. . . .

Sen. Rockefeller: Mr. President, I applaud the Congress for its swift passage of the Risk Retention Amendments of 1986. As an original co-sponsor of this measure, I believe that this is a significant achievement that will provide an insurance safety valve for doctors, businessmen, day care providers, public officials, among others.

Sen. Rockefeller

For over a year now this nation has been mired in one liability crisis after another and my own state of West Virginia provided some of the most dramatic examples. Beginning in about November 1985, I started to hear from West Virginia's businessmen, doctors, day care providers, mayors, and county commissioners. Recognizing how widespread the insurance problem was becoming, I wrote to my State's mayors and county commissioners. Their letters were overwhelming, all echoing the same theme: Despite their excellent claims record their insurance had been canceled.

By April, the insurance crisis reached its peak in West Virginia when three medical insurance providers issued cancellation notices to most of our state's 7,000 doctors, 58 hospitals, and other health professionals. The industry's action, in a state which is already medically underserved, threw the state into turmoil. Scores of West Virginians called my office after being told by their doctors that their hospital, health clinic, dialysis center or doctor's office would be closed.

For two months, West Virginians were held hostage to the threats of three insurance companies who said they would rather abandon the state than comply with an insurance/tort reform measure enacted by the legislature. Ultimately, the state legislature buckled to the demands of the insurers. I am convinced, however, that if West Virginia's health providers had access to another liability insurance option, the insurance companies would have been hard pressed to blackmail our state. The Risk Retention Act amendments provide consumers with the safety valve option that they so desperately need.

These amendments provide doctors, municipalities, small businesses, counties, non-profit groups, and others with the latitude necessary to help them through insurance crises. The measure preempts differing state insurance laws and allows certain groups to form interstate insurance pools. For example, Williamson, W.V., could join in a municipal liability insurance pool with South Williamson, Ky. Likewise, a doctor in Buckhannon, W.V. could join in a medical malpractice pool with a doctor from Manchester, N.H., and a West Virginia ski resort could pool with a similar outfit in Pennsylvania.

* * *

Sen. Gorton: Mr. President, in the risk retention bill that passed the Senate there were two provisions that permitted a non-chartering state to enjoin the solicitation or sale of insurance by, or the operations of, a risk retention group—or purchasing group—whose officers, organizers, or directors have been found to have engaged in certain wrongful conduct within the previous five years under circumstances which create a likelihood that such conduct would be repeated. . . .

I understand that this language was dropped because it was unnecessary. In other words, there is nothing in this bill that curtails a state's ability to act in this regard to the extent such authority exists under state law and is not used to discriminate unfairly against a risk retention group or purchasing group. Does the Senator from Wisconsin agree with my understanding of the reason for dropping this provision?

Sen. Kasten: I do. The Senator from Washington has correctly stated the reason for dropping the Senate language.

* * *

Sen. Gore: Mr. President, I am pleased to co-sponsor this amendment. . . .

During hearings on this legislation in the Commerce Committee, the Tennessee Municipal League representative testified as to the success of the Tennessee Municipal League risk retention group available to municipalities in Tennessee. Due to the success of this group, Tennessee has had fewer experiences like those in some other states where municipalities and their officials cannot obtain insurance at all—or at affordable rates.

Not only will this bill make it easier for such groups to form in those States that do not have such groups, but it will facilitate the formation of reinsurance groups which are essential to the success of primary risk retention groups.

While it is the purpose of this measure to preempt those state laws which unfairly discriminate against the creation and operation of risk retention and purchasing

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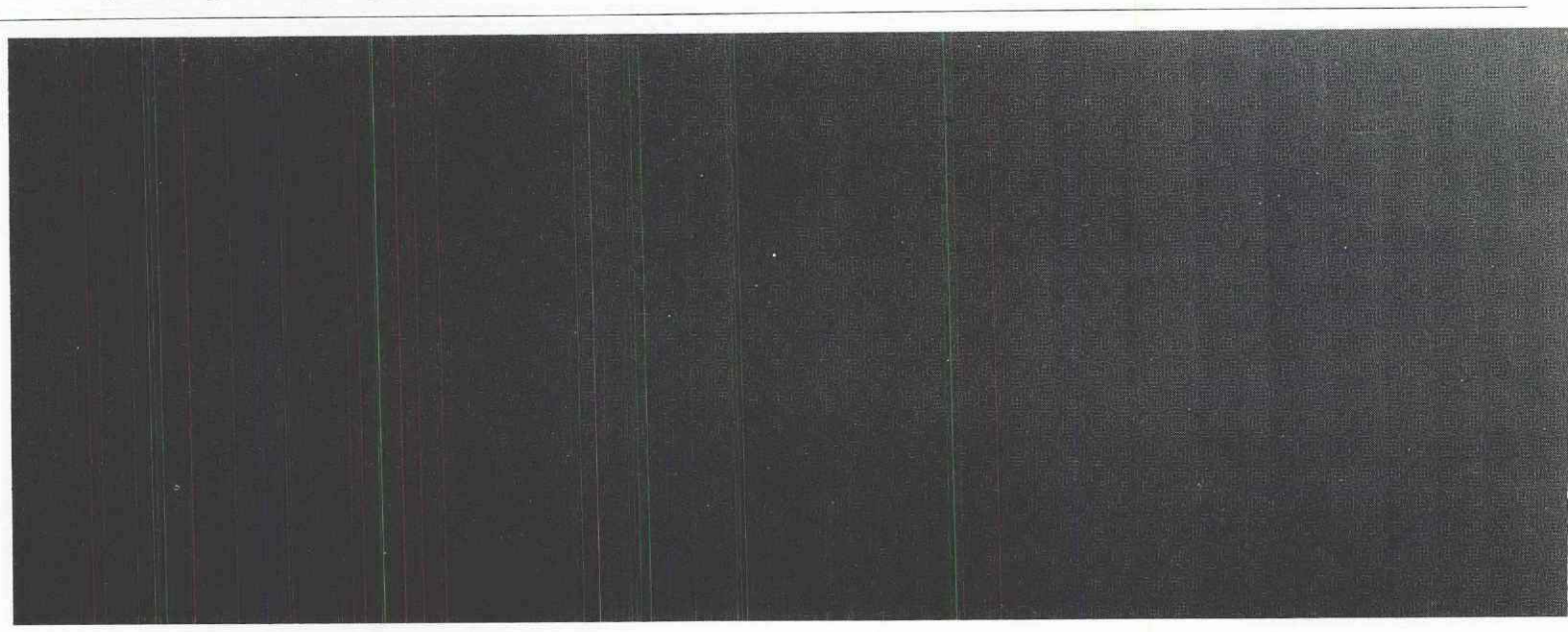

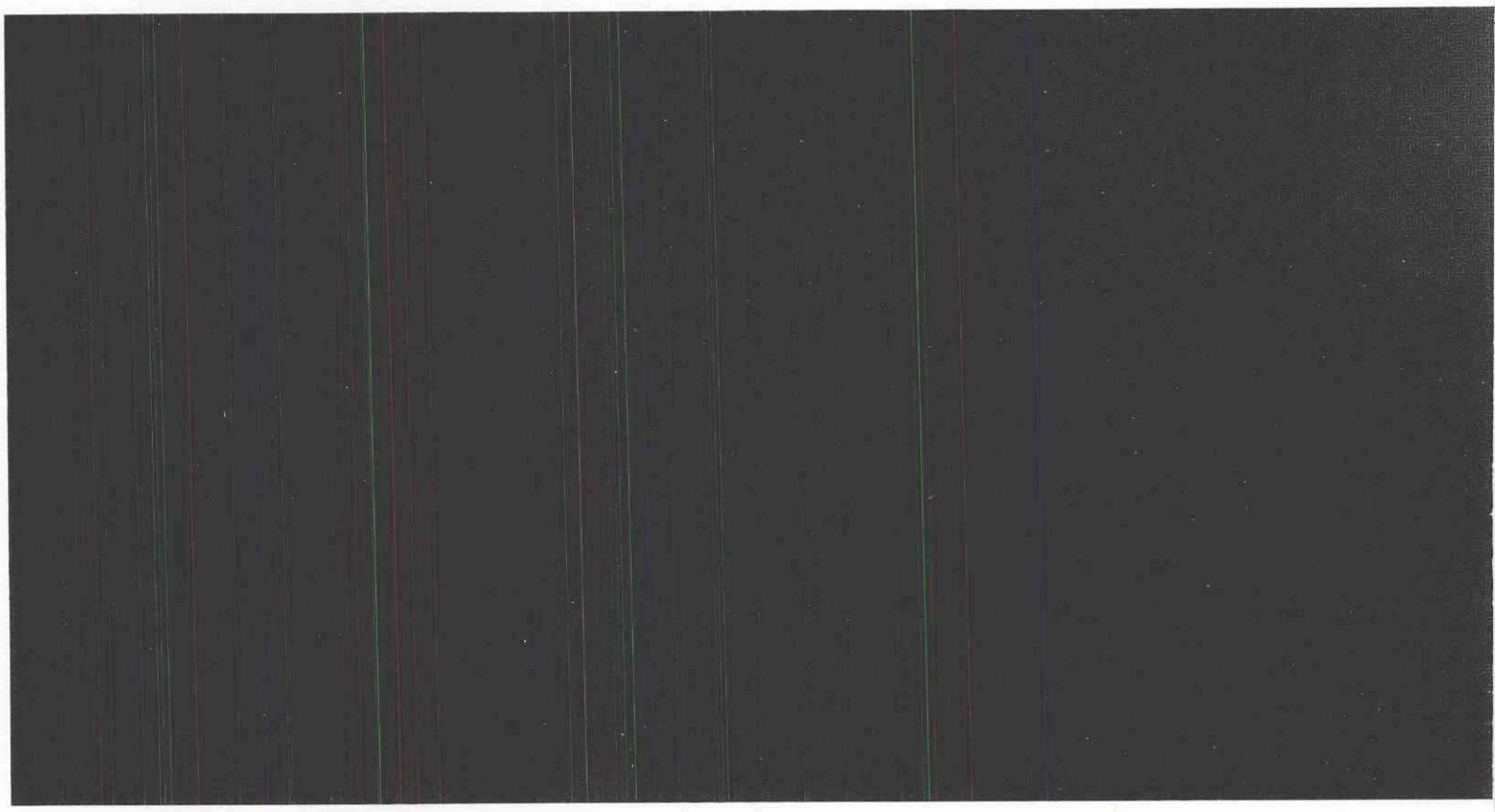

"We dropped $490 million

Revenues		
1981	$3.7 Billion	
1985		**$5.1 Billion**

Assets		
1981	$8.1 Billion	
1985		**$11.5 Billion**

When we looked at Continental in the early 1980s, we saw an assortment of unrelated business units heading in different directions. A sharper focus was needed. So, as a key element of our new growth strategy, we decided to reorganize around the core business we know best—insurance.

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Results so far? A stronger and better focused Continental.

One example: the increase in business from national insurance brokers. We made a concerted effort to put the people, programs and capital in place to develop business from this source. In 1981 our

Continued from previous page

groups, it is important to note that this legislation has gone through several versions, each strengthening the supervisory role of the non-chartering states within which the risk retention group or purchasing group operates. . . .

Finally, I want to highlight what I believe is an extremely important provision of this legislation, the requirement that the Secretary of Commerce submit reports to the Congress regarding implementation of the act. The entire debate over the unavailability and unaffordability of liability insurance has been clouded by a lack of impartial analysis. . . .I believe that the Secretary, in order to fulfill the requirements of this provision, would need to discuss the availability and quality of insurance claims data and other information relevant to the pricing of liability insurance. This section also requires the Secretary to closely examine any conduct by the states which may have effect of unfairly and unreasonably discriminating against risk retention and purchasing groups. There is little doubt that Congress would consider further preemption of state authority should it be determined that the states engaged in such conduct contrary to the purposes of this act.

* * *

Sen. Lautenberg: Mr. President, I rise to support the amendment of the Senator from Wisconsin to the House amendment to S. 2129.

The bill before us is much improved over the bill the Senate passed in July. Major flaws in the bill have been addressed. The version before us makes explicit states' freedom to ensure the solvency and prudent management of risk retention groups. Who may own risk retention groups is clarified to guard against fly-by-night operators.

* * *

I am pleased that the Senator from Wisconsin has agreed to include in the proposed amendment, at my suggestion, a provision which amends the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA). The Senate last week approved the conference report on SARA, legislation to amend and reauthorize CERCLA. SARA would authorize risk retention groups and purchasing groups in the area of pollution liability. The relevant provisions are modeled very closely on the 1981 Product Liability Risk Retention Act.

S. 2129 would also authorize risk retention groups and purchasing groups in the area of pollution liability. However, the risk retention group and purchasing group provisions in SARA do not reflect the clarifying work—to ensure solvency and prudent management and to protect the public interest—that has been done on the generic risk retention measure before us.

If SARA is ultimately signed into law after enactment of the measure before us, an argument might well be made that the latter enactment would prevail, in the event of any conflicts or conflicting interpretations. The result could be underregulated groups that would face a greater risk of failure, leaving insureds uncovered and communities and injured parties without a source of recovery for their injuries. That is not our intent and the amendment before us includes a provision, at subsection (c) (1) of (Effective Date; Applicability), that is intended to avoid such a statutory construction and to avoid such a result. Of course, if S. 2129 is enacted after SARA, there also should be no doubt that pollution liability risk retention groups and purchasing groups would be subject to the additional safeguards, requirements and oversight explicitly provided in S. 2129. ■

House debates Risk Retention Amendments

Editor's note: The following is the text of the House debate on Oct. 9, 1986, preceding the passage of the Risk Retention Amendments of 1986. The Representatives who addressed the bill included: James J. Florio, D-N.J., and Norman F. Lent, R-N.Y.

Where paragraphs have been edited out, three stars appear. Where sentences have been edited out, three periods appear.

Rep. Florio: Mr. Speaker, we are about to take final action on the Liability Risk Retention Act of 1986. This is a very important measure which can help address the liability insurance crisis. I want to congratulate Rep. Wyden and Rep. Lent for the successful completion of this legislation to which they have devoted so much effort.

Rep. Florio

The bill under consideration is one on which we in the House worked for many weeks in order to ensure a carefully balanced bill. By facilitating the formation of self-insurance groups and purchasing groups, the bill can help provide much-needed additional insurance capacity and alternatives to traditional insurance. At the same time, we have sought to provide protection for the public against potential commercial abuses.

* * *

I hope that this bill will help many businesses and organizations that have been unable to obtain affordable insurance. The insurance crisis poses a complex challenge to all of us. With enactment of the present bill we will have taken an important first step toward addressing the crisis.

* * *

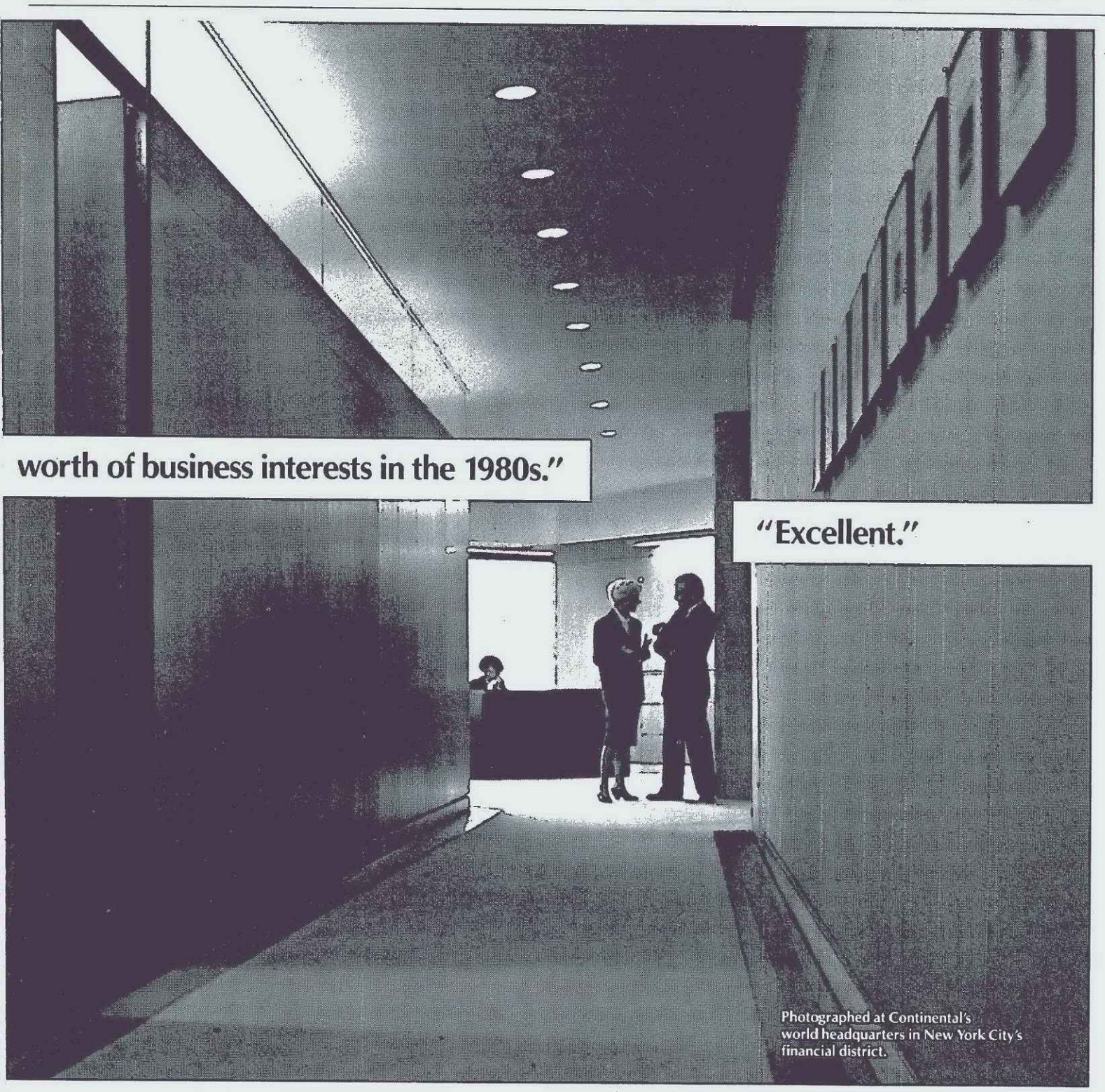
To paraphrase the bill, liability is generally defined to mean legal liability for damages because of injuries to other persons or damages to their property resulting from any business or operations. I want to make clear that the term operations includes commercial fishing operations or other maritime operations.

Rep. Lent: Mr. Speaker, during this Congress, we have all heard from our constituents about the liability insurance crisis. A liability horror story has made the news nearly every day. Many businesses are gong bare and, thereby, risking financial disaster if severe losses should occur. With the passage of the legislation we are considering today, we will be able to tell our constituents that relief from the crisis is on the way.

* * *

Mr. Speaker, I believe that this bill will provide the relief our constituents so desperately need from the liability insurance crisis, and I urge my colleagues to support it. I would like to commend both Congressman Wyden and Chairman Florio, as well as Members of the other body, for their efforts on this bill. . . .Finally, I would like to thank Chairman Dingell for his cooperation and support in the craftings of this legislation.

Finally, Mr. Speaker, no one pretends that risk retention and purchasing groups are a panacea. S. 2129 will not solve all the problems facing the liability insurance market. However, it will provide an alternative to the traditional insurance market. In this troubled time, it may be the most and the least we can do. ■



premiums from national brokers totaled some $100 million. Today they are over $600 million.

We also took significant steps to expand our life and health insurance business. Today, at $638 million, life and health represents 15 percent of our total premiums compared to 8 percent in 1981.

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The Liability Risk Retention Act of 1986

Editor's note: The following is the text of the "Product Liability Risk Retention Act of 1981" as amended by the "Risk Retention Amendments of 1986," creating the "Liability Risk Retention Act of 1986."

The amendments were passed by the Senate and The House of Representatives on Oct. 6 and Oct. 9, respectively. The legislation is awaiting President Reagan's signature, which is expected.

Business Insurance has followed the instructions of the amendments to present the following text of the "Liability Risk Retention Act of 1986."

SHORT TITLE

Sec. 1. This Act may be cited as the "Liability Risk Retention Act of 1986."

DEFINITIONS

Sec. 2.(a) As used in this Act—

(1) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk, which is determined to be insurance under applicable State or Federal law;

(2) 'liability'—

(A) means legal liability for damages (including costs of defense, legal costs and fees and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

(i) any business (whether profit or non-profit), trade, product, services (including professional services), premises, or operations; or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) 'personal risk liability' means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2) (A) and (2) (B);

(4) "Risk retention group" means any corporation or other limited liability association

(A) whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which—

(i) is chartered and licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Amendments of 1986).

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which—

(i) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(ii) has as its sole owner an organization which has as—

(I) its members only persons who comprise the membership of the risk retention group; and

(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises or operations;

(G) whose activities do not include the provision of insurance other than—

(i) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members and;

(ii) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase 'Risk Retention Group.'

(5) 'purchasing group' means any group which—

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State.

(6) "State" means any State of the United States or the District of Columbia and

(7) 'hazardous financial condition' means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business.'

(b) The definition of liability, personal risk liability and insurance in paragraph (4) of subsection (a) of this section shall not be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State.

RISK RETENTION GROUPS

SEC. 3.(a) Except as provided in this section, a risk retention group is exempt from any State law, rule,

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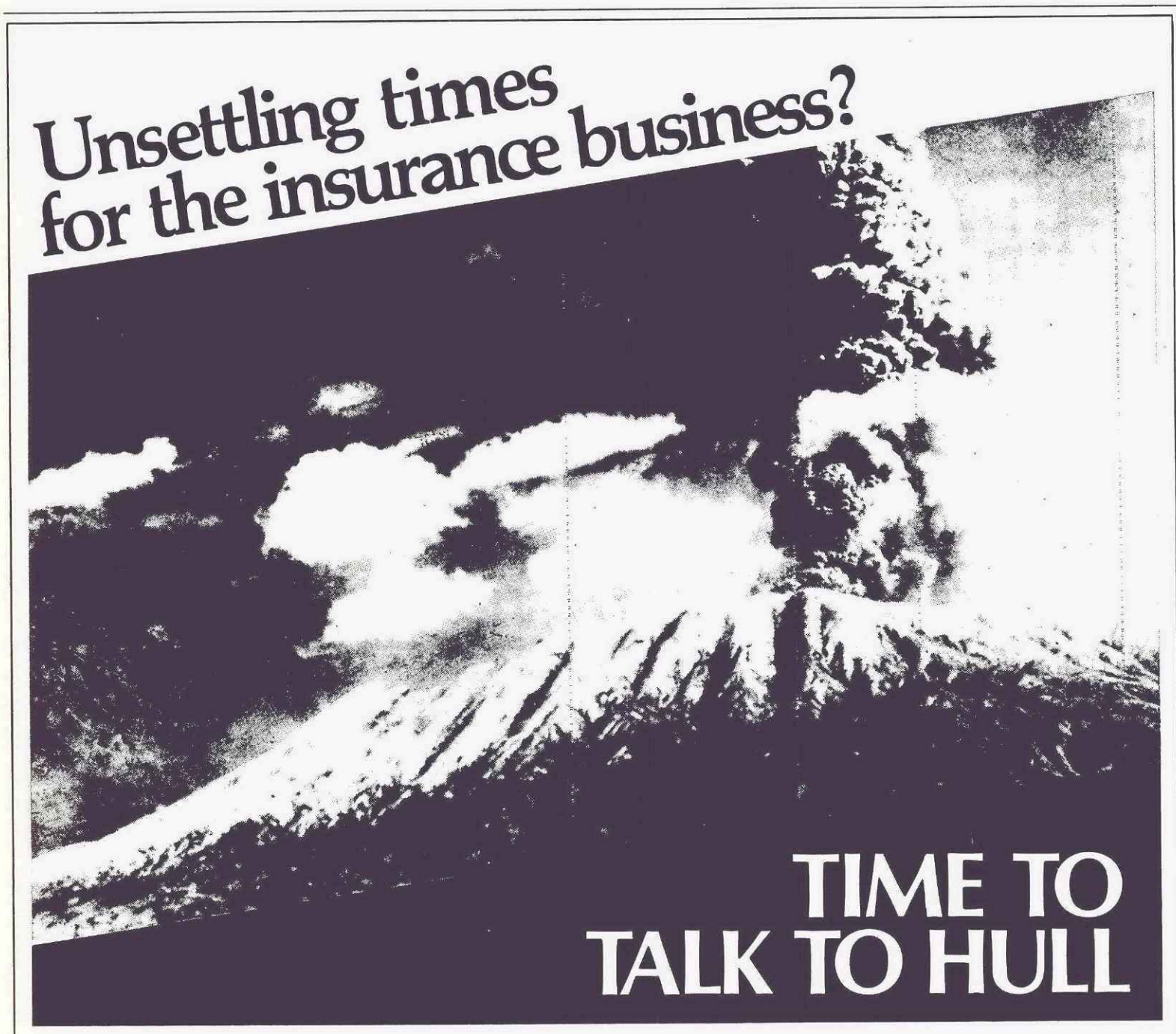

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regulation, or order to the extent that such law, rule, regulation or order would—

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

(A) Comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers or policyholders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(E) submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition if—

(i) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(ii) Any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition.

(F) comply with a lawful order issued—

(i) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(ii) in a voluntary dissolution proceeding.

(G) comply with any State law regarding deceptive, false or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

'NOTICE

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group.'

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance

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Risk Retention

Continued from previous page

agent or broker residing in that State; or

(4) otherwise discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

(b) The exemptions specified in subsection (a) apply to laws governing the insurance business pertaining to—

(1) liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and

(3) the provision of—

(A) insurance related services;

(B) management, operations, and investment activities; or

(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

(c) A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) Each risk retention group shall submit—

(1) to the insurance commissioner of the State in which it is chartered—

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1) (B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

(A) a member of the American Academy of Actuaries, or

(B) a qualified loss reserve specialist.

(e) Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.

(f) (1) Subject to the provisions of subsection (a) (1) (G) (relating to injunctions) and paragraph (2), nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this Act.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e), such injunction must be obtained from a Federal or State court of competent jurisdiction.

(g) Nothing in this Act shall affect the authority of any State to bring an action in any Federal or State court.

(h) Nothing in this Act shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

PURCHASING GROUPS

SEC. 4.(a) Except as provided in this section and section 6, a purchasing group is exempt from any State law, rule, regulation or order to the extent that such law, rule, regulation, or order would—

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on a group basis described in paragraph (2) of this subsection;

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8)otherwise discriminate against a purchasing group or any of its members.

(b) The exemptions specified in subsection (a) apply to—

(1) liability insurance, provided

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Continued from previous page

to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group; and

(2) the provision of—

(A) liability coverage;

(B) insurance related services; or

(C) management services;

to a purchasing group or member of the group.

(c) A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(d) (1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such state. Such notice—

(A) shall identify the State in which such group is domiciled;

(B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;

(C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and

(D) shall identify the principal place of business of the group.

(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

(e) A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

(1) which—

(A) was domiciled before April 1, 1986; and

(B) is domiciled on and after the date of the enactment of this Act;

in any State of the United States;

(2) which—

(A) before the date of the enactment of this Act, purchased insurance from an insurance carrier licensed in any State; and

(B) since such date of enactment, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this Act before the date of the enactment of the Risk Retention Amendments of 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this Act as in effect before the date of the enactment of the Risk Retention Amendments of 1986.

(f) A purchasing group may not purchase from a risk retention group that is not chartered in a State or from an insurer not admitted to the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.

(g) Nothing in this Act shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under the Act.

(h) Nothing in this Act shall effect the authority of any State to bring an action in any Federal or State court.

APPLICABILITY OF SECURITIES LAWS

SEC. 5.(a) The ownership interests of members in a risk retention group shall be —

(1) considered to be exempted securities for purposes of section 5 of the Securities Act of 1933 and for purposes of section 12 of the Securities Exchange Act of 1934; and

(2) considered to be securities for purposes of the provisions of section 17 of the Securities Act of 1933 and the provisions of section 10 of the Securities Exchange Act of 1934.

(b) A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C.80a-1 et seq.).

(c) The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

CLARIFICATION CONCERNING PERMISSIBLE STATE AUTHORITY

Sec. 6. (a) Nothing in this Act shall be construed to exempt a risk retention group or purchasing group authorized under this Act from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

(b) The exemptions provided under this Act shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this Act shall be construed to permit the provision or purchase of any other line of insurance by any such group.

(c) The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) Subject to the provisions of section 3(a) (4) relating to discrimination, nothing in this Act shall be construed to pre-empt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether coverage is obtained directly from an insurance company or through a broker, agent, purchasing group, or any other person.

INJUNCTIVE ORDERS ISSUED BY UNITED STATES DISTRICT COURTS.

SEC. 7. Any district court of the United States may issue an order enjoining a risk retention group from soliciting or selling insurance, or operating, in any State (or in all States) or in any territory or possession of the United States upon a finding of such court that such group is in hazardous financial condition. Such order shall be binding on such group, its officers, agents and employees, and on any other person acting in active concert with any such officer, agent, or employee, if such other person has actual notice of such order.

OVERSIGHT OF IMPLEMENTATION: REPORT TO CONGRESS.

(a) IN GENERAL.—(1) Not later than Sept. 1, 1987, and not later than Sept. 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act.

(2) Such report shall be based on—

(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

(B) the Secretary's analysis of other information available to the Secretary.

Continued on next page

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Risk Retention

Continued from previous page

(b) CONTENTS OF THE REPORT.—The report shall describe the Secretary's views concerning—

(1) the contribution of this Act toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

(2) the extent to which the structure of regulation and preemption established by this Act is satisfactory;

(3) the extent to which, in the implementation of this Act, the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices and procedures contrary to the provisions and underlying policy of this Act and the Product Liability Risk Retention Act (as amended by this Act); and

(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act.

EFFECTIVE DATE; APPLICABILITY.

(a) GENERAL RULE.—Subject to subsection (b), this Act shall take effect on the date of its enactment.

(b) SPECIAL RULE REGARDING FEASIBILITY STUDY.—The provisions of section 3(d) of the Liability Retention Act of 1986 (as added by section 5(b) of this Act), relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

(1) was defined in the Product Liability Risk Retention Act of 1981 before the date of the enactment of this Act; and

(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than three years before such date of enactment.

(c) RULE REGARDING POLLUTION LIABILITY—

(1) Section 210 of the Superfund Amendments and Reauthorization Act of 1986 is amended by inserting '(a)' following 'Pollution Liability Insurance' and adding at the end thereof the following:

'(b) For purposes of subsection (a) of this section, the powers and authorities of States addressed by the Risk Retention Amendments of 1986 are in addition to those of this Act.'

(2) Nothing in this Act shall be construed, interpreted or applied to diminish the obligations of any person to establish or maintain evidence of financial responsibility or otherwise comply with any of the requirements of Federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 and the Solid Waste Disposal Act. ■

Storm damages set at $45 million

NEW YORK—Wind, hail and flooding caused an estimated $45 million in insured losses in Nebraska on Sept. 22, according to C.E. Hermanson, vp of the Property Claim Services division of American Insurance Services Group Inc.

The heaviest damage occurred in and around Omaha.

The Property Claim Services estimate does not include damage insured under the National Flood Insurance Program.

The storm was assigned Catastrophe Number 22 by Property Claim Services. ■

Study shows HMO users' satisfaction

MINNEAPOLIS—Subscribers to health maintenance organizations in the Minneapolis-St. Paul area are more likely to be satisfied with the quality of their medical care than their counterparts covered by traditional commercial insurance, according to a new survey.

And, more HMO subscribers than people with traditional health care coverage believe the quality of their care has improved during the past two years, the survey said.

The study, "Consumer Health Care Satisfaction," was designed by the research department of Physicians Health Plan, an HMO managed by the United HealthCare Corp. in Minneapolis.

The survey questioned 399 adults in the Twin Cities. The breakdown in the sample corresponded to the breakdown in coverage in the Minneapolis area: 43.3% of the respondents were enrolled in commercial insurance plans, including Blue Cross/Blue Shield, and 56.7% were enrolled in HMOs.

The study's findings included:

- Satisfaction with overall medical care. Among all the respondents, 43% said they were very satisfied with the quality of their health care, and an additional 51% said they were satisfied.

But, among the respondents that belong to the three HMO groups surveyed, the number saying they were very satisfied ranged from 48% to 59%.

- Satisfaction with current health plan. Again, a higher percentage of HMO members expressed satisfaction with their current health plan.

The percentage of HMO members saying they were very satisfied or satisfied ranged from 89% to 99%, while 85% of the commercial insurance subscribers and 91% of those with Blue Cross/Blue Shield said they were very satisfied or satisfied with their current health plan.

- Quality of health care now, compared with two years ago. Among the HMO members, the percent of respondents that said the quality of their health care had improved ranged from 35% to 55%.

But, only 29% of those with commercial insurance and 22% of those with Blue Cross/Blue Shield coverage said their health care was better now than two years ago.

- Coverage for prescription drugs. Most of the HMO members —from 89% to 92%—reported they had partial coverage for prescription drugs. Almost all the rest had full coverage for the cost of their prescription drugs.

And, 61% of the commercial insurance subscribers and 56% of those with Blue Cross/Blue Shield also had partial coverage for prescription drugs.

However, substantially more of those—15% of the commercial insurance subscribers and 27% of the Blue Cross/Blue Shield members—had no coverage at all for prescription drugs.

United HealthCare Corp. points out that Minneapolis-St. Paul is a good base for a survey on HMO usage, for the HMO movement began there.

"The changes that much of our nation is just beginning to undergo with respect to changes in health care delivery began in the Twin Cities several decades ago," says Noreen L. Suntrup of United HealthCare Corp.

Ms. Suntrup points out that, while only about 10% of the population nationwide belongs to an HMO or other alternative health care delivery system, close to half the people in the Minneapolis-St. Paul area get their health care from such a system. ■

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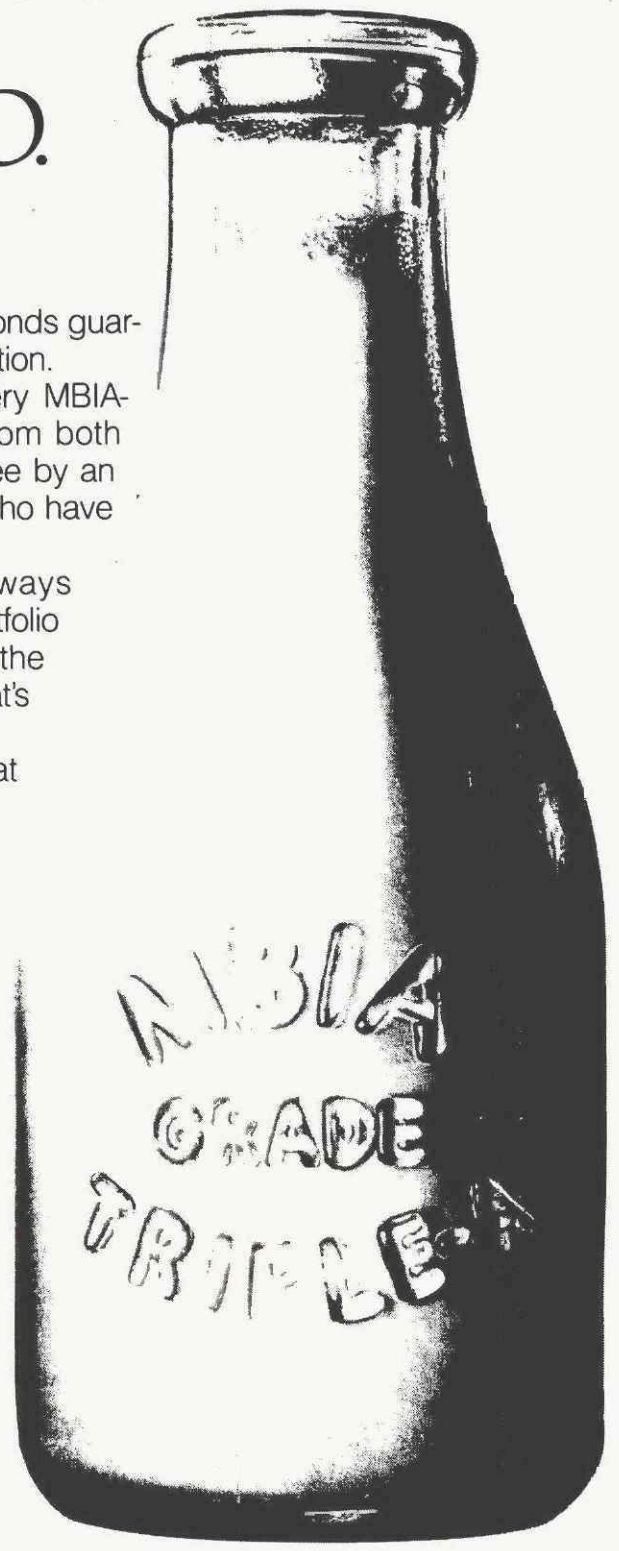

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Coors offers breast cancer screening

benefit beat

The Adolph Coors Co. of Golden, Colo., is offering its female employees, wives of employees and retirees a lifesaving program for early detection of breast cancer.

The company introduced COORSCREEN, a breast cancer screening program using mammography and emphasizing early detection through breast self-examination.

The program began last year with a pilot offering. It is offered on-site through the company's employee wellness center.

Coors also recently donated $400,000 toward the sponsorship of HIGH PRIORITY, a national breast cancer outreach program of AMC Cancer Research Center in Denver, said Nancy Williams, national program manager at Coors.

"The idea for the screening program came from women who work here who were concerned about the need for early detection of breast cancer. They presented it to management, and that really got the ball rolling," she explained.

In general, a woman must be at least 35 years old to have a mammogram, which costs the woman $15, said Mary Greenwood, a wellness specialist in the Coors wellness center. The cost to the company is $40 for each test.

The program follows the recommendations of the American Cancer Society and the American College of Radiology by setting the eligibility age at 35, she said.

However, women younger than 35 whose physicians feel they need the test also can participate.

About 5,000 women who are employees, spouses of employees or retirees are eligible for the program, Ms. Greenwood said.

COORSCREEN began last year with a three-month pilot program offered only to female employees 35 or older, said Ms. Greenwood.

"We had 68% participation in the pilot program, so we decided to open it to female spouses and retirees."

The company communicated the program through a network of 40 female employees, said Ms. Williams. "We selected the women and taught them about what we were going to do. It really helped to get women to participate in a test that can be scary."

The communication campaign, called "Talk to a Friend," also included printed question-and-answer brochures, consent and medical history information forms and posters. The goal was to inform women of the importance of early detection, Ms. Williams said.

"The national average of women who have mammograms is under 5%," she said.

And, the average cost ranges from $150 to $175. "Everyone's working to bring down the cost of mammograms with the thought that that's why women don't have them," she said.

So far, 1,400 women have had mammograms through COORSCREEN, said Ms. Williams. Twenty-two women whose mammogram results were atypical were instructed to see physicians to follow up on the test results.

And, "we've found two early detected malignancies so far," Ms. Greenwood said.

Coors' sponsorship of the HIGH PRIORITY program has helped to fund a national advertising campaign, featuring actress/singer Cher in national magazines.

The advertisements stress early detection through self-examination with the theme, "Take your life into your own hands."

As part of that campaign, Coors and the AMC Cancer Research Center are distributing laminated cards with instructions for performing self-examinations in the shower, Ms. Williams said.

"We've mailed out about 60,000 shower cards around the country," to individuals and health care organizations that saw the offer in the advertisements, she said.

"We're real proud of the program. We're trying to get the positive word out that 90% of breast cancers are curable if they are detected early," Ms. Williams said.

Pension increases

A new three-year contract between Akron-based GenCorp Inc. and the United Rubber Workers union provides pension increases for about 1,100 employees of the company's Charlotte, N.C., plant.

Employees are covered under a three-tiered defined benefit pension plan that was established in 1983, said a spokesman for the tire manufacturer in Akron.

Under the new contract, employees will receive $17 per month for each of the first 15 years of service, up from $15.

Employees will receive $19 for each of the next 15 years of service, up from $16.50.

Employees with 30 years of service or more will receive $20.50 per month for each year of service.

The contract also retains the profit-sharing cost-of-living adjustment formula negotiated in the previous contract, he said.

Under the formula, 35% of employees' profit-sharing payments is based on the company's financial performance and the remaining 65% is based on a cost-of-living adjustment, he said.

There were no changes in health benefits under the contract, he said.

The contract was ratified in early September by a 549-521 vote, and is effective until September 1989.

Retirement offer

An early retirement offer is part of a corporate reorganization plan at Toledo, Ohio-based Owens-Corning Fiberglas Corp.

Some 420 eligible employees had until Oct. 3 whether to accept the offer, with retirements effective Oct. 31, a spokeswoman said.

Under the plan, employees at least 55 years old with 10 years of service on Oct. 31 were offered payments of 50% of base salary for two years. Employees could elect to receive the payment in a lump sum at retirement or in installments over two years, she said.

In addition, employees will receive unreduced pension benefits from the company's defined benefit pension plan. The company's normal retirement age is 60, the spokeswoman said.

The number of employees accepting the offer has not yet been determined, she said.

Plan termination

Nacco Industries Inc. hopes to recapture about $16 million in excess assets after terminating a defined benefit pension plan.

The plan covers 60 active employees and retirees, said a spokesman for the Cleveland-based coal supplier.

"We will be replacing the plan with a defined benefit pension plan," said the spokesman.

The plan will be terminated on Nov. 30, and the excess assets will be used for general business purposes, he said.

Retirement deal

Some 700 salaried non-union employees of Mack Trucks Inc. accepted an early retirement offer made by the company in June.

Employees had until Aug. 31 to accept the offer, with retirements effective on Dec. 31, said a spokesman for the Allentown, Pa.-based trucking concern.

He would not reveal details of the offer, but said, "the offers varied depending on age and service and whether employees were part of the contributory or non-contributory pension plan."

The offer was made to reduce the company's workforce in the decreasing market for heavy duty trucks, he said. The company's salaried, non-union workforce now stands at about 2,900, down from approximately 6,000 in 1979.

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Puerto Rican group to buy Central National, affiliates

markets

A Puerto Rico-based investment group, Professional Underwriters Investment Inc., has agreed to purchase The Central National Insurance Co. of Omaha, Neb., and its affiliated companies.

Central National and its affiliated companies are part of the St. Regis Group, which is owned by Champion International Corp. in New York.

Professional Underwriters operates diversified firms in Puerto Rico, including Professional Underwriters Insurance Co., a direct underwriter licensed only in Puerto Rico, said a Central National spokesman. The organization also operates manufacturing companies and is involved in real estate.

Professional Underwriters Insurance was originally a Central National agency established in Puerto Rico in 1968, he said.

Professional Underwriters Investment President, Hector L. Gonzalez "has had a longtime affiliation with Central National since the late '60s," as president of the Central National agency, explained the spokesman.

Included in the Central National sale is The Protective National Insurance Co. of Omaha, a reinsurance company that voluntarily placed itself under supervision of the Nebraska Insurance Dept. in January (*BI*, Jan. 27).

Protective said it was unable to recover losses from reinsurers of business written by managing general agent Global Surplus Insurance Services Inc., a discontinued unit of broker Frank B. Hall & Co. Inc.

In May, Hall contributed $45 million to a trust fund for the benefit of Protective National's policyholders.

Protective remains under supervision, said the spokesman.

Protective reported 1985 policyholders' surplus of about $6.8 million.

Also included in the sale are:

- Action Financial Services Inc. of Los Angeles, an agency specializing in collateral protection insurance.
- Angelina Casualty Co. of Lufkin, Texas, a direct property/casualty insurer with 1985 policyholders surplus of about $27.7 million.
- National Underwriters Inc. of Indianapolis, also a collateral protection insurance agency.
- The Protective Insurance Underwriters Inc., an agency specializing in credit-related insurance.
- Security Assurance Co. of Phoenix, which specializes in credit life insurance.
- Pinetree General Insurance Co. (Bermuda) Ltd. and Pinetree Universal Insurance Co. (Bermuda) Ltd., which were used by Angelina Casualty for reinsurance, according to the spokesman.
- St. Regis Insurance Co. (Bermuda Ltd. which was formed "for the use of St. Regis," the spokesman said.

The sale is expected to be finalized within the next month, he said. Terms were not disclosed.

The companies will retain their current management and locations.

Excess coverage

Superior National Insurance Co. in Los Angeles has begun writing $1 million excess of $1 million in casualty coverage through a new underwriting management affiliate, SN Insurance Services Inc.

SN will write excess coverage above primary coverage written by either Superior National or other insurers. Kevin Jeffery, who was recently senior vp at Sayre & Toso Inc., heads the underwriter as executive vp.

Superior National was formed last year by several former Mission Insurance Group officials to write California workers compensation policies but has expanded to insure numerous other commercial property/casualty risks. Its writings are concentrated in northern and central California, largely in construction, agriculture and related industries.

Met buys into HMO

MetLife HealthCare Management Corp., the St. Louis-based health maintenance organization subsidiary of Metropolitan Life Insurance Co., has acquired 45% of Health Advantage, an HMO in Phoenix, Ariz.

Terms of the transaction were not disclosed.

Health Advantage, formed in 1985 by the Maricopa Foundation for Medical Care, has more than 6,000 members, said Ralph Alexander, president of MetLife HealthCare. The Maricopa Foundation is a preferred provider organization in Phoenix.

Members of Health Advantage can choose from among more than 800 physicians and 19 hospitals, he said.

Health Advantage will become one of 18 MetLife HealthCare Networks nationwide, he said.

The merger with Health Advantage also will enable Metropolitan to offer Phoenix employers its new "triple option" group health plan, he said. The plan includes an indemnity plan, an HMO and a PPO option (*BI*, Sept. 29).

"We selected Phoenix for this expansion because of an expressed interest by the Maricopa Foundation. There also are several employers who are MetLife customers that expressed interest in our triple-option plan," Mr. Alexander explained. "The plan should become operational before year-end."

Long-term care HMO

Health Purchasers Inc., a coalition of Illinois employers, labor unions and retirees, is forming a new health maintenance organization that will include supplemental optional long-term custodial care benefits.

Working with Med/Impact Corp., an alternate delivery system consultant in Oak Brook, Ill., the group hopes to have the HMO operating by Jan. 1, 1988, said Gordon Nary, chief executive officer of Med/Impact.

"Financing of the supplemental custodial benefits will be through premium assessments, an annuity plan and a Retirement Care Account," to which enrollees can contribute funds to finance their retirement medical care, he explained.

"Rather than having a general fund for these benefits, each individual has their own custodial care account," he added.

"The cost of providing custodial care for retirees is a national problem. While this won't solve the problem, it will help," Mr. Nary said.

The medical retirement account will be similar to an individual retirement account, Mr. Nary said. However, "it will require some special legislation by the Illinois Legislature, including some provisions for tax consideration of deposits to the accounts."

Also, unlike most HMOs, the new plan will offer enrollees the opportunity to use doctors and hospitals outside the network for non-emergency services and still receive coverage. This will apply in situations where enrollees are working outside of the HMO's service area, he said.

"Some of the unions sponsoring the HMO include industries like construction. Those people have to go where the work is, and sometimes that is away from home. This plan provides benefits if they get care from providers not in the HMO," he explained.

The HMO probably will contract with 50 acute care hospitals and 25 long-term care facilities that will offer 20% to 25% discounts to HMO members.

"Even after a retiree's custodial care account runs out, these providers will continue offering these discounts on care. So, the retirees can double or even triple their

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Continued from previous page
health care purchasing power," Mr. Nary said.

So far, the employers and unions sponsoring the project represent approximately 80,000 people in central Illinois who would be covered by the new HMO, he said.

"One condition is that employers sponsoring the project would have to pick up 25% of the premium cost in an attempt to provide funding to get the plan started," he said.

New E/S broker

Commercial Brokerage Corp. is a new excess/surplus lines brokerage specializing in placing product liability, umbrella and professional liability coverages.

"We will use a variety of domestic carriers and Lloyd's of London to place coverages," said Peter J. Shean, president of the Minneapolis-based broker.

The firm is located at 230 N. River Ridge Circle, Burnsville, Minn. 55337; 612-890-9525.

Mergers/acquisitions

Arthur J. Gallagher & Co. has acquired the San Francisco brokerage and risk management services firm of **Heffernan, Keiler & Doble Inc.** for 770,448 shares of Gallagher common stock. Gallagher, based in Rolling Meadows, Ill., is the 11th-largest insurance broker in the nation, with 1985 gross revenues of more than $81 million.

King of Prussia, Pa.-based insurance brokerage, **Warren & Welsh Co.**, has merged with broker **Inter/National Rental Insurance** of San Clemente, Calif. The combined firms have 15 offices nationwide, project a 1986 premium volume of about $80 million and that they will rank among the 50 largest brokers in the country. Warren & Welsh is located in the Irwin Building, King of Prussia, Pa. 19406-0942; 215-337-0330.

Fred S. James & Co. Inc. has acquired **Insurance Associates Corp.** of Boise, Idaho. The agency offers a wide range of property/casualty coverages.

The law firms of **Karon, Morrison & Savikas Ltd.** and **Reagin & King** have merged. The new name of the firm is **Karon, Morrison & Savikas**. The firm specializes in general commercial litigation and property matters, said John Morrison, partner in the new firm. The firm's main office is located at Suite 1200, One Brickell Square, 801 Brickell Ave., Miami, Fla. 33131; 305-371-3117.

Alexander & Alexander Services Inc. has acquired the Dallas-based tax consulting firm of **Ad Valorem Tax Consultants Inc.** The firm will become part of the Property Tax Service Co. of A&A Inc. The division helps clients to analyze, examine and assess property tax costs. A&A Services Inc. is the second-largest insurance broker in the nation with 1985 gross revenues of almost $970 million.

New offices

Anistics Inc. has relocated to 220 E. 42nd St., Fifth Floor, New York, N.Y. 10017; 212-972-9600.

Commercial Insurance Alternatives Inc., a firm specializing in equity joint-venturing of multiowner captives, has moved to a new location at 1250 Church St., St. Helena, Calif. 94574-9998; 707-963-2400.

Pilko & Associates Inc., a Houston-based risk management and industrial development consulting firm, has opened another office at One Greentree Centre, Suite 201, Marlton, N.J. 08053; 609-596-0335.

Sherwood Insurance Services, a wholesale brokerage and managing general agent, has relocated its Los Angeles office to The Equitable Building, 3435 Wilshire Blvd., Suite 2930, Los Angeles, Calif. 90010; 213-487-3260.

Towers, Perrin, Forster & Crosby Inc. has opened a consulting office in Brazil at Rua Buenos Aires 68, 30 Andar, Rio de Janeiro 20070; 55-21-242-5977. The new office will serve national and multinational organizations operating in northern Brazil.

Walsh & Walls Inc., an excess and surplus lines brokerage, has relocated to 55 John St., New York, N.Y. 10038; 212-772-0390.

Russell Miller, Inc., a management consulting firm for the insurance industry, is relocating its New York office to 123 William St., New York, N.Y. 10038-3804; 212-619-3670.

CCS Communication Control Inc. has relocated its corporate offices to 160 Midland Ave., Port Chester, N.Y. 10573; 914-934-8100. CCS Communication Control manufactures and designs security and surveillance equipment. ■

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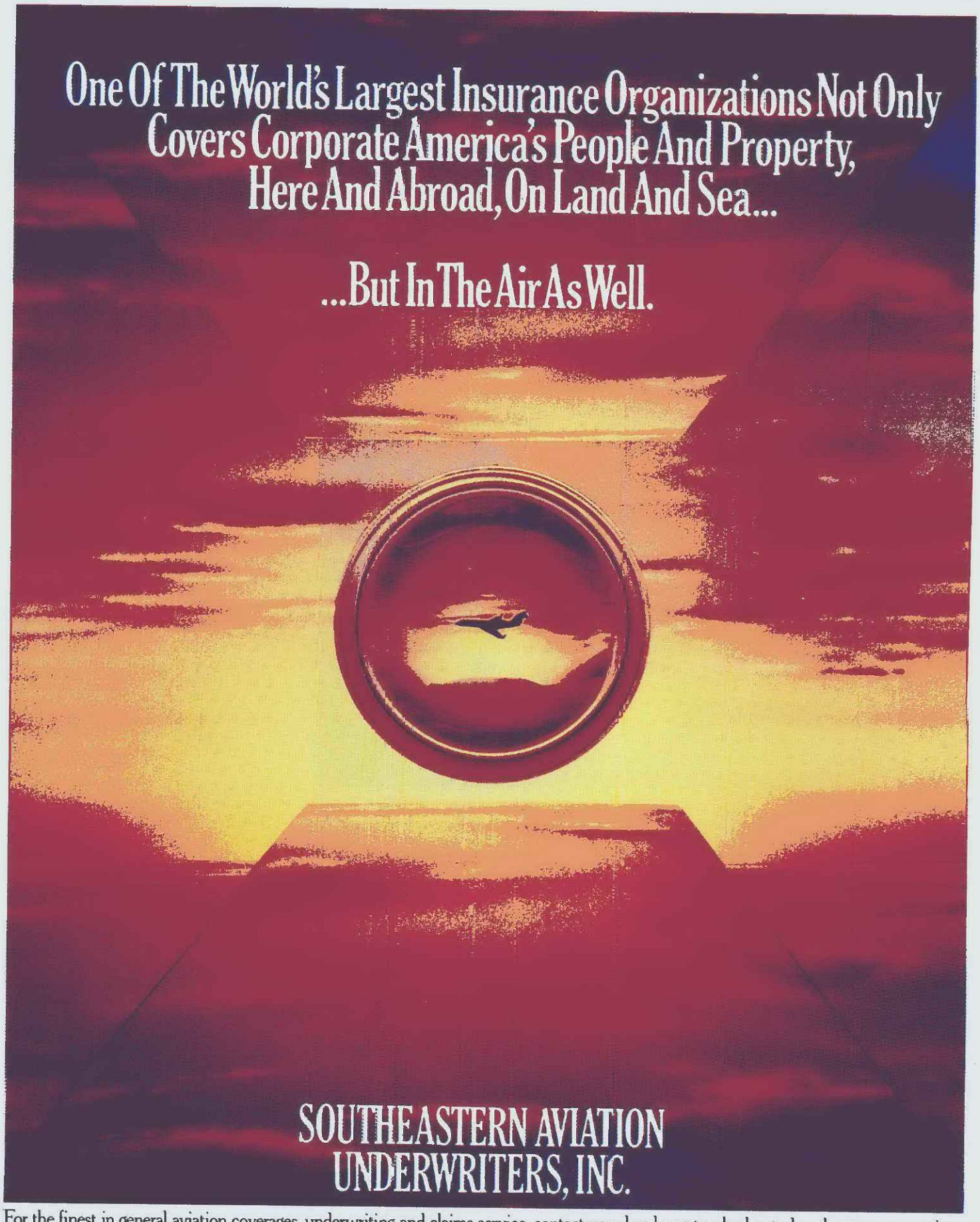

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United Technologies expands its staff

John P. Polakovic has been appointed director-risk management at United Technologies Corp. in Hartford, Conn. In this position he will be responsible for designing and implementing a worldwide risk and insurance management program for the manufacturer. He replaces **Robert Hugel**, who has joined Johnson & Higgins in Hartford. And Mr. Polakovic reports to Raymond Willis, corporate director of risk and benefits and assistant treasurer. Previously, Mr. Polakovic served as director, corporate risk management at RCA Corp. in New York. He received a bachelor of arts degree from Villanova University in Villanova, Pa., and holds the Associate in Risk Management designation.

Also at United Technologies, **David E. Chzaszcz** has been appointed director-risk and benefits management systems. In this newly created position, Mr. Chzaszcz will be responsible for managing data processing systems and services. Mr. Chzaszcz reports to Mr. Willis. Previously, he was corporate business systems manager at Hartford Life Insurance Co. in Simsbury, Conn. Mr. Chzaszcz holds a bachelor of business administration and master of business administration degrees from the University of Connecticut in Storrs.

David S. Bowen has been named manager-casualty actuarial services at United Technologies. In this newly created position, he will provide risk management actuarial guidance in evaluation of casualty loss exposure, prospective accrual allocations for casualty liabilities and evaluation of factors for use in loss prevention programs. Mr. Bowen reports to Mr. Willis. Before joining UTC, he was with Travelers Insurance Cos. in Hartford. He received a bachelor of science degree in mathematics from Worcester Polytechnic Institute in Mass., and is a fellow of the Casualty Actuarial Society and an associate of the Society of Actuaries.

Leon D. Palmer has been appointed administrator-risk management at United Technologies. In this newly created position, he will be responsible for providing data processing applications in a variety of risk management functions, with a concentration on casualty insurance. Mr. Palmer reports to Mr. Polakovic. Previously, he was a senior accounts administrator with the Travelers Insurance Cos. in Hartford. Mr. Palmer holds a bachelor of business administration degree from the University of Connecticut in Storrs.

* * *

Frank A. Menna has been named manager of insurance and risk analysis at Subaru of America Inc. in Cherry Hill, N.J. In this newly created position, Mr. Menna will assist in the evaluation, development and implementation of risk management programs. He reports to Mary Harrington, corporate risk manager. Previously, Mr. Menna served at Frank B. Hall of Pennsylvania for eight years in various capacities. Mr. Menna received a bachelor of arts degree in marketing and management and a master of business administration degree in finance from St. Joseph's University in Philadelphia. Mr. Menna holds the Associate in Risk Management designation.

* * *

Michael E. Thrower, 38, has been named director of insurance at Degussa Corp. in Teterboro, N.J. In this position he will be responsible for Degussa's U.S. insurance requirements. Mr. Thrower replaces **Thomas D. Lewison**, who left Degussa to join Rorer Group Inc. in Fort Washington, Pa., as director of risk management. Mr. Thrower reports to Richard M. Ornitz, vp and general counsel. Degussa, a subsidiary of Frankfurt, West Germany-based Degussa A.G., is involved in chemical production, including pharmaceuticals, metals and other products. Mr. Thrower previously was manager of insurance and loss prevention at Union Camp Corp. in Wayne, N.J. He received a bachelor of science degree in engineering from the United States Merchant Marine Academy in Kings Point, N.Y., and is a licensed marine engineer. In addition, Mr. Thrower is a licensed property/casualty broker and a deputy member of the Risk & Insurance Management Society.

Mr. Thrower

* * *

Michael Craig has been named director of insurance and risk management for Paracelsus Healthcare Corp. in Pasadena, Calif. In this newly created position he coordinates all aspects of insurance and risk management for the 21 hospitals and five convalescent homes that are owned and operated by PHC. Previously, Mr. Craig served as vp, national director for the hospital/health service division of Rollins Burdick Hunter in Pasadena. Prior to that, he was director of risk management for HealthWest Foundation in Chatsworth, Calif. Mr. Craig received a bachelor of arts degree in history and chemistry from the University of California at Los Angeles. He is a deputy member of the Risk & Insurance Management Society and a member of the American Society of Hospital Risk Management. In addition, Mr. Craig is on the advisory boards of the California Hospital Assn.'s Insurance Services Corp. and the Allendale Insurance Co.

Mr. Craig

* * *

Sharron Pawley, 33, has been named insurance claims coordinator for the City of Las Cruces, N.M. In this newly created position, she will be responsible for the city's self-administered employee health care plan. Her duties include processing and paying health care claims for the more than 600 city employees. Ms. Pawley reports to Richard D. Hodgin, risk manager. Previously, Ms. Pawley was an executive secretary in the city risk management department.

Also in the City of Las Cruces: **Sally Bowker** has been named liability claims coordinator. In this newly created position, she will be responsible for the city's self-administered loss retention program for liability and workers compensation claims. She reports Mr. Hodgin. Previously, Ms. Bowker was an executive secretary in the city risk management department.

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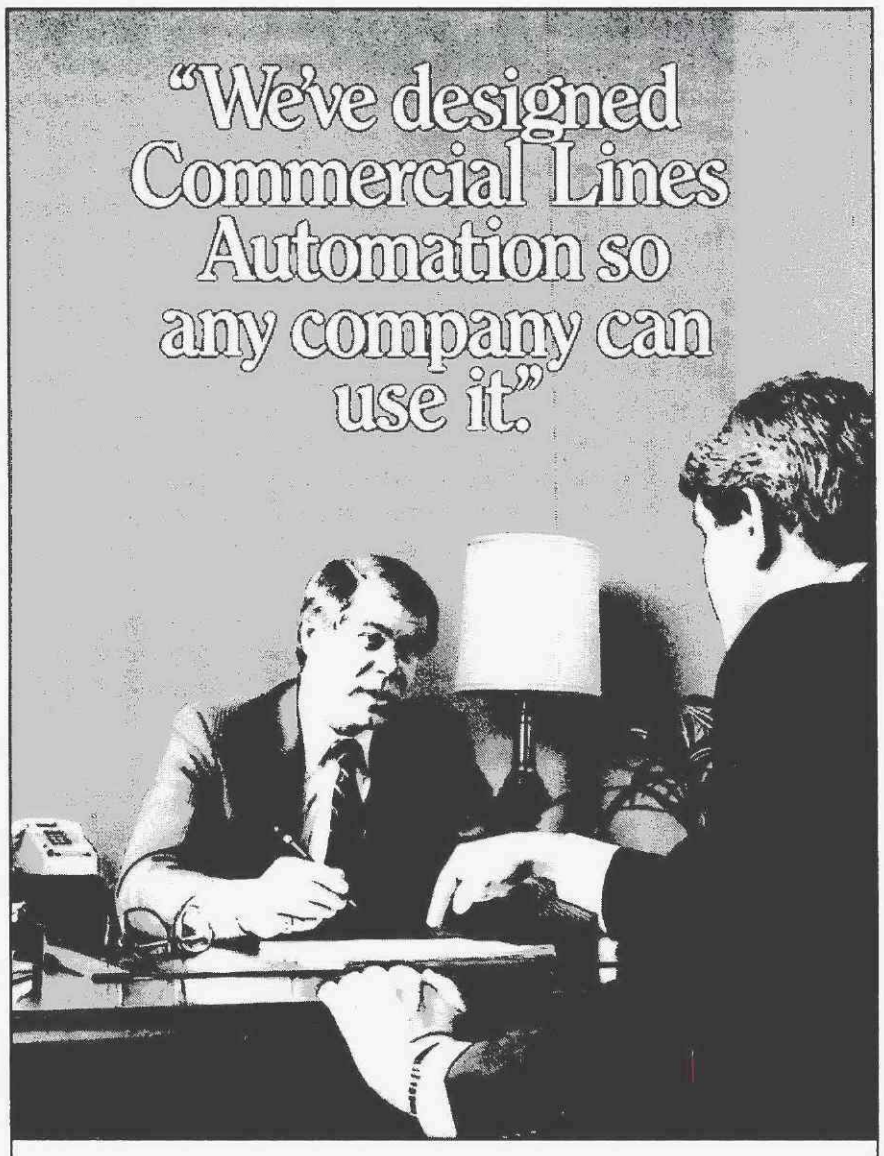

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Insurers' employees pay more

ATLANTA—An increasing number of U.S. insurance companies are requiring their own employees to pay larger deductibles for their health care coverage, according to a recent survey by a life insurers' trade organization.

The survey by the Life Office Management Assn., called "Personnel Policies and Practices: 1986" reveals that last year, 55% of the insurance companies surveyed required employees to pay a deductible of more than $100, compared with only 5% in 1983.

The report also reveals, however, that even though deductibles increased, the majority of companies still require employees to pay only a 20% coinsurance toward their medical bills.

"Personnel Policies and Practices" covers the trend toward cost-containment measures, based on a 1985 survey of 178 U.S. and 32 Canadian life insurance companies.

To further hold down costs, more companies are carefully auditing medical claims for billing errors, according to the survey. For example, one out of every three respondents required employees submitting claims to check their own bills for errors.

Other topics covered in "Personnel Policies and Practices," which will be available soon, include: absenteeism and turnover rates; flexible/cafeteria benefits programs; 401(k) plans; smoking policies; reductions in force; relocation allowances; employee assistance programs; and human resources staffing ratios.

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Copies of the report are available for $50 plus postage and handling to individuals from LOMA member companies, or $95 plus postage and handling for individuals from non-member companies. Postage and handling charges are $2.50 for one report and 75 cents for each additional report. To order, call Chris Denman at 404-984-3780.

Day-care suit

Continued from page 2

- Taking such actions without regard to whether losses were incurred by the insurers in providing coverage for child-care centers and knowing that such centers must maintain liability insurance coverage to be licensed and stay in business.
- Attributing cancellations, non-renewals and increased premiums to the increase in child abuse and molestation claims filed against child-care centers, even though new policies written after July 1985 exclude from coverage claims related to child abuse and molestation.

The suit cites an insurance industry study that allegedly shows losses sustained by the insurance industry in 1984 and 1985 were primarily due to bad weather, including six hurricanes, and an insurance price war.

It also asserts that contrary to insurers' arguments, the property/casualty insurance industry did not sustain a loss in 1985 and that the industry's stock rose by 50% during 1985, almost double the rise in the general stock market.

"The defendants' insurance problems, if any, are of their own making, are related to insurance price wars which have occurred in recent years, bad underwriting practices, and unusual, but predictable losses from mass disasters principally caused by weather conditions," the suit says.

"The defendants' problems or losses are totally unrelated to child-care centers in Colorado," the suit says.

The suit cites two examples of day-care centers that it says have been damaged by the actions of the insurers.

Between August 1984 and August 1985, Child Garden Inc. was insured by Insurance Co. of North America for $500,000 in primary coverage and by Aetna Insurance Co., now part of the CIGNA group, for $1 million in umbrella coverage with premiums totaling less than $3,000, according to the suit.

The insurers refused to renew the coverage in August 1986 without giving a reason for non-renewal, even though no claim was filed against Child Garden during the four years it had been in business, the suit said.

The only coverage it could subsequently obtain was from Western World Insurance Co. Inc. for maximum limits of $500,000 and for a premium of $8,716, the suit added.

As a result, Child Garden has lost profits, was prevented from increasing its business, was subjected to the risk of personal losses in excess of policy limits, its center's lease was placed in jeopardy and it was forced to increase rates for customers, the suit added.

In addition, A Child's Adventure Land Inc. went through similar problems with its insurer, SAFECO Insurance Co. of America, the suit says.

The suit adds that all of the insurers have violated the Colorado statute that requires that insurers should not agree with each other to restrain trade, to lessen competition and to refuse to deal in connection with the sale of insurance.

It also alleges that the insurers unlawfully interfered with the day-care centers' business and contractual relationships with customers; conspired to harm the centers through threats, coercion and duress placed on them to pay exorbitant premiums or else lose coverage; and breached their implied covenants of good faith and fair dealing.

In addition, the suit charges the insurers with violating the McCarran-Ferguson Act by engaging in a boycott, coercion or intimidation, causing them to lose their exemption from federal antitrust laws and to be subject to treble damages.

'The defendants' insurance problems, if any, are of their own making, are related to insurance price wars,. . .bad underwriting prctices, and unusual, but predictable losses from mass disasters principally caused by weather,' the suit says.

The suit also says that further substantial increases this year will cause many child-care centers to go out of business, and it seeks to enjoin the insurers from further increasing premiums.

Attorneys for defendants flatly denied the allegations.

"In our opinion, the plaintiffs are attempting to short-circuit tort reform efforts going on in Colorado and others states;" said Michael L. O'Donnell, an attorney for defendant Maryland Casualty Co. with the Denver firm of White & Steele.

Maryland and other defendants filed motions to dismiss the original complaint on various grounds, including that the subject of the lawsuit comes under the jurisdiction of the state insurance commissioner and not the court, Mr. O'Donnell said.

They also contend the insurance code does not give day-care centers the right to sue the insurers and that they failed to exhaust administrative remedies.

"Factually, the complaint is incorrect about what has happened in the past," said William G. Imig, an attorney for Aetna and INA with the Denver firm of Ireland, Stapleton, Pryor & Pascoe.

He added that day-care insurance is very much available this year and that some of the insurers are trying to write more business than in the past few years.

The allegations of a conspiracy are "ludicrous," he added. "Insurance companies are among the most competitive of any group you can find in the country."

An attorney for Brotherhood Mutual Insurance Co. also denied any liability on his client's part.

"Discovery to date shows that Brotherhood has never canceled, refused to renew or refused to issue an insurance policy to any of the plaintiffs in this case," said Dennis Graham, an attorney with the Denver firm of Massey, Graham & Showalter.

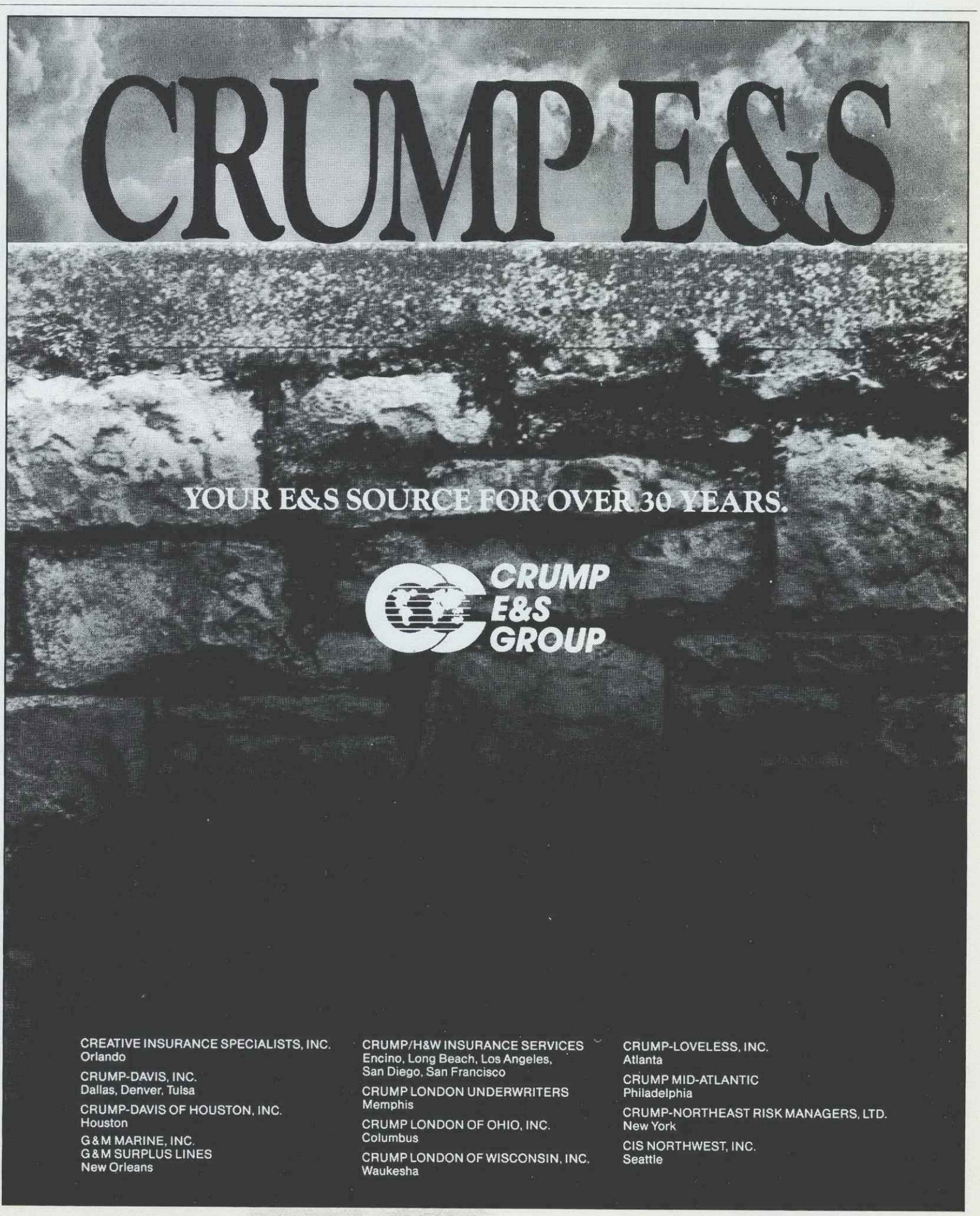
"Discovery also clearly indicates that Brotherhood never extracted exorbitant premiums from the plaintiffs," Mr. Graham said.

In its answer to the original complaint, State Farm Fire & Casualty Co. denied the allegations and charged that they are defamatory and highly inappropriate. It noted that State Farm did not insure either plaintiff.

Robert Ferm, an attorney for most of the remaining defendants with the Denver firm of Hall & Evans, charged that plaintiffs' attorneys' groups who oppose tort reform were behind the suit.

"We really do think the suit is groundless," he said.

In addition to Aetna, Brotherhood, INA, Maryland Casualty, SAFECO, State Farm and Western World, other insurers named in the suit are Commercial Union Insurance Co., General Insurance Co. of America, Hartford Casualty Insurance Co., National Casualty Co., St. Paul Fire & Marine Insurance Co., Transit Casualty Co., Travelers Insurance Co., United States Fidelity & Guaranty Co. and Western Casualty & Surety Co. ■



Guernsey Captive Insurance Conference

Island officials have high hopes

By STACY SHAPIRO

Guernsey 'is set to be the premier center for insurance and reinsurance operations. And, with proper and controlled development (we) can be the gateway to Europe for overseas markets,' says Steve W. Butterworth, insurance supervisor.

ST. PETER'S PORT, Guernsey—Steve W. Butterworth, the new insurance supervisor for the Channel Island of Guernsey, is setting his sights high.

Guernsey "is set to be the premier center for insurance and reinsurance operations," according to Mr. Butterworth.

"And, with proper and controlled development (we) can be the gateway to Europe for overseas markets," he said.

Mr. Butterworth—who had been on the island for two days as Guernsey's first insurance supervisor—was echoing the upbeat sentiments of many of the registrants at the recent Guernsey Captive Insurance Conference, which was held here Oct. 1-2.

The conference, intended to promote Guernsey as a captive insurance center, was held by the Guernsey Insurance Company Managers Assn. in conjunction with risk management consultants Insurance & Reinsurance Research Group of London.

More than 150 people came from as far away as Australia to find out about the Guernsey offshore captive insurance market. And, those participants learned that the island's captive industry has been undergoing rapid change during the past year.

For example, since January more than 30 new captives have been formed, according to John Parkinson, chairman of the Guernsey Insurance Company Managers Assn. and managing director of Transnational Risk Management (Guernsey) Ltd. There are now about 200 captives in Guernsey, ranking it as the third-largest offshore captive domicile behind Bermuda and Cayman, conference members said.

Mr. Parkinson

Also, last summer Guernsey's unicameral legislature—the States of Guernsey—finally passed its Insurance Business Law, which awaits signature from the Privy Council, an office of Queen Elizabeth II.

Mr. Butterworth believes this will occur by Dec. 1 and the law will go into effect Jan. 1 (see story, page 109).

The law will for the first time set out regulations for Guernsey's captive industry to follow. Captives accounts, for example, will have to be registered formally with the insurance supervisor.

Mr. Butterworth

In addition, two new individuals have joined the States of Guernsey's civil service to assist in regulating Guernsey's finance industry.

Continued on next page

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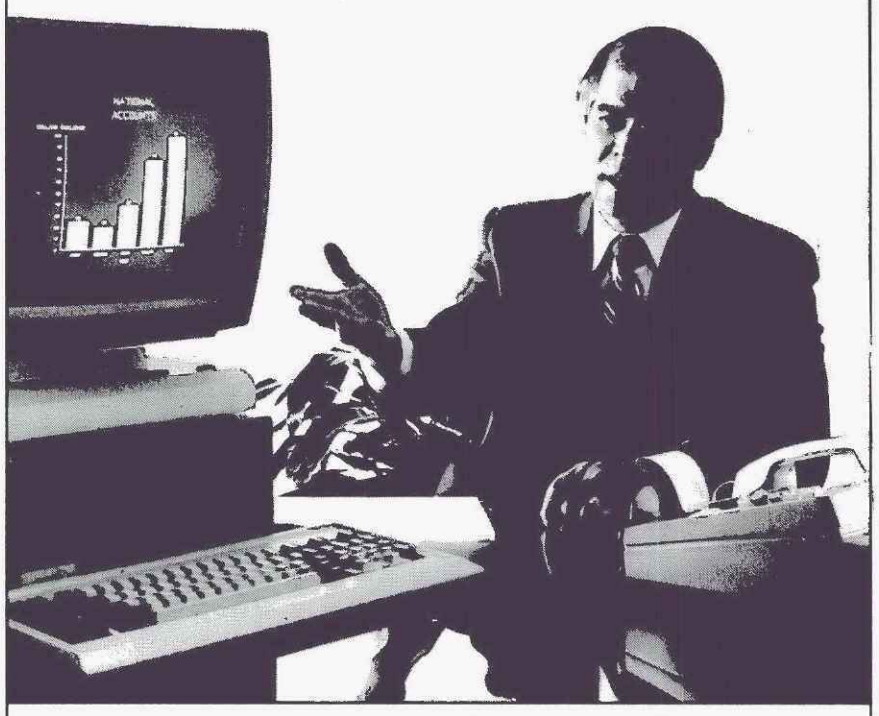

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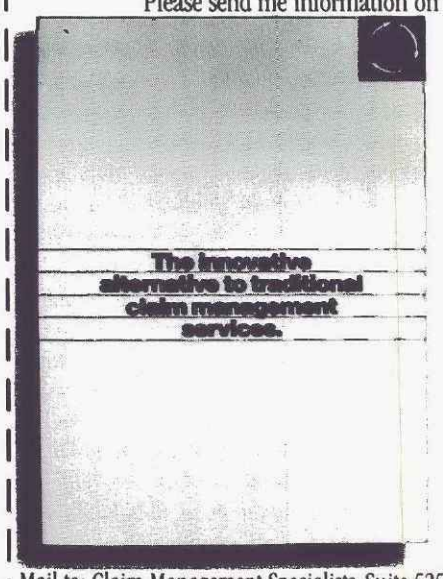

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Continued from previous page

To begin with, John Roper has replaced Bruce Riley as the commercial relations adviser for the States' Advisory and Finance Committee.

He is in charge of the regulation of the finance industry, including captives, on the island.

Mr. Riley left abruptly in June to work for two subsidiaries of Guernsey Ltd., a U.K. merchant bank in Guernsey.

Mr. Roper reports to Guernsey's Advisory and Finance Committee on the finance industry. He approves companies, including banks and captives, to be set up in Guernsey.

Mr. Roper told the conference that he had to learn quickly to fill Mr. Riley's shoes.

Until the beginning of October, Mr. Roper worked on his own, approving captive insurance companies, an area in which he admits he is not an expert.

In fact, it is possible—although not likely—that some of the captives that he approved may not meet the new Insurance Business Law regulations, Mr. Roper acknowledged.

The other new government official in Guernsey is Mr. Butterworth, who arrived at the conference after a 24-hour flight.

"We must formulate a long-term insurance plan highlighting the necessary requirements which will enable us to capitalize on our already substantial interests," Mr. Butterworth told those attending the conference.

'Perhaps most important of all, we must develop our human resources,' says Mr. Butterworth.

In particular, Guernsey's finance industry has to decide what type of insurers are preferable on the island and from which countries, and which types of companies are suitable—mutuals, single parent captives, association captives, etc. —he said.

"Perhaps most important of all, we must develop our existing human resources on the island," he said.

"I believe that Bermuda will be the only serious competitor if we can make the necessary adjustments within our long-term plan," he said.

Mr. Butterworth, formerly deputy superintendent for insurance in the Cayman Islands since 1982, was chosen as the first insurance supervisor in Guernsey before Mr. Roper came to Guernsey.

A native of England, Mr. Butterworth, 43, was selected for the position because of his expertise in the insurance regulatory field (*BI*, Sept. 8).

One of Mr. Butterworth's first tasks will be to structure the insurance regulations that will enforce the new insurance business law, including how accounts should be presented to the insurance supervisor and what they should contain.

"I will be establishing the regulations of the law as to how the law will be administered," said Mr. Butterworth.

"I will probably give two months grace for captives to be registered under the law (after the law is signed by the Privy Council and the regulations are published). Then I will sort out who I can register and who I can't," the new supervisor said.

"But, the captives already on the island will take a long time to register. Assuming the law comes into effect by Jan. 1. . .it will take at least six months," he said.

In his first two days, Mr. Butterworth had already approved in principle a captive that wants to write freight insurance.

"It is a mirror of one of the captives in the Cayman Islands and I know the players," he explained.

Mr. Roper says he is delighted to see Mr. Butterworth at the insurance helm.

"I am going to give him a free hand," said Mr. Roper. "We haven't talked at length yet because he has been here so short a time. But I will say, 'You know what you are doing, so carry on. But, I want to know what you are doing,' to make sure that his style is similar to mine.

"We must both strike a balance between firmness and limpness. We are not here to make life difficult for the finance service industry.

"But, companies must follow the guidelines of the law. We must achieve this with as little fuss and drama as possible," Mr. Roper commented. ■

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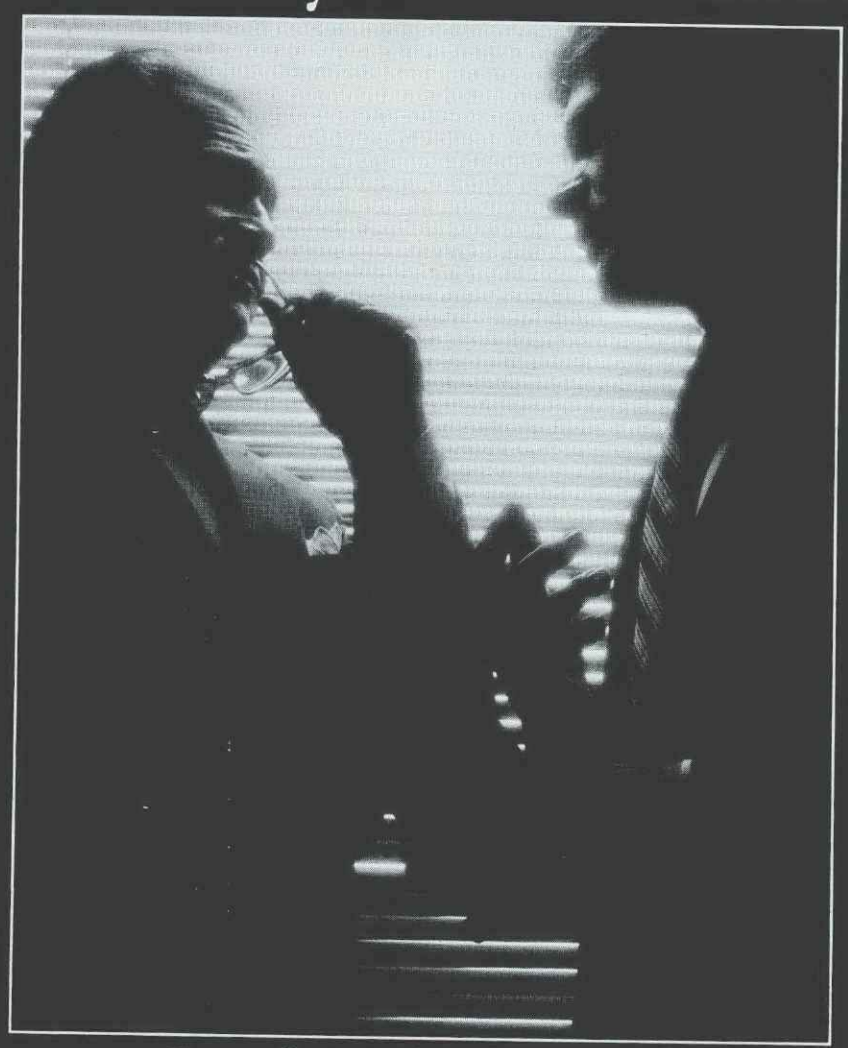

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Guernsey touts its advantages for captives

By STACY SHAPIRO

ST. PETER'S PORT, Guernsey—The largest offshore insurance captive haven in Europe, Guernsey is one of the Channel Islands off the coast of France in the English Channel and is a self-governing country under the English Crown.

The 24-mile-long island has its own unicameral legislature, known as the States of Guernsey, and its own judicial system, which are not part of the United Kingdom.

Although it is not part of the United Kingdom, Guernsey is a crown colony under Queen Elizabeth II. The British Parliament's law can be extended to Guernsey, but only by consultation with States of Guernsey. The Crown's Privy Council, too, must approve Guernsey laws.

Guernsey, which has 63,400 residents, has virtually full employment, John Roper, the island's commercial relations adviser, told the Guernsey Captive Conference on Oct. 1-2. The island's gross national product at the end of 1985 was 395 million pounds ($572.8 million), of which half was derived from the island's finance industry.

In addition to about 50 banks represented on the island, 200 captive insurance companies are domiciled in Guernsey. They largely are managed by nine captive insurance managers belonging to the Guernsey Insurance Company Managers Assn. They include Transglobe Underwriting Management (Guernsey) Ltd., Transnational Risk Management (Guernsey) Ltd., Channel Islands Insurance Consultants Ltd., and Capacity Resources (Channel Islands) Ltd.

Mr. Roper

There are also about 10 law firms and a half dozen stockbrokers, according to Mr. Roper.

Guernsey is only an hour by plane from England and easily accessible to the London insurance and reinsurance market. It is on the same time zone as London, which conference members say is an advantage.

Hotels, restaurants and plane fares are also modestly priced, and telecommunications are excellent, Mr. Roper said.

But there are some disadvantages to setting up a captive in Guernsey. For instance, Guernsey can get fogged in, preventing planes from leaving the island, which some conference members experienced.

Also, Guernsey has a critical staff shortage, conference members discovered. Banks and captive managers are searching for new employees on the island, but the candidates who answer the ads are already working in the finance sector.

"People move around here even more than in London," said Mr. Roper. "This spirals wages upward."

'We surveyed the entire captive scene and Guernsey was everything we were looking for—stability, a good infrastructure and easy access at a reasonable cost. I can make three trips here for the cost to take one to Gibraltar,' says Ian Comrie-Smith of Unigate.

Most potential employees moving to Guernsey must obtain a license from the Housing Authority to own a home in Guernsey. Applicants are reviewed by Mr. Roper and the Advisory and Finance Committee to determine if the employee will contribute to the revenue of Guernsey.

"The Housing Authority, which has the final say, takes a tough line now," he said.

"This may sound cynical, but what is essential to the island is revenue. . .So, any institution which wants to make a demand on resources of the island must show that it is good for Guernsey's revenue."

Only five years ago, Guernsey was more lenient on the number of overseas employees permitted on the island because Guernsey wanted to attract business. "We said then, 'You can come if you can employ people,'" he said. "Now we say, 'You can come if you do not need people.'"

Mr. Roper does not see this as a problem for corporations that want to set up captives in Guernsey, however, noting that there already are 13 captive managers on the island.

"It is in my mind that these managers are all we need," he said. "There is no pressure from this sector for people to come to the island."

Another disadvantage, some clients believe, is tax. Generally, Guernsey imposes a 20% tax on insurers' profits, though pure captives are taxed only on the investment income they generate.

However, captives can establish what is known as a "non-resident tax subsidiary" to which the captive could transfer its reserves. The subsidiary, which must pay a 300-pound fee, then could invest those reserves on a tax-free basis outside of Guernsey on the island of Sark.

The reserves also can be deposited in Guernsey banks and still escape taxation since non-resident companies pay no taxes to Guernsey on bank deposits.

While some managers complain about taxation, others say Guernsey's tax laws could be a drawing card, especially for British-owned captive insurance companies.

Now that the British corporate tax rate has been lowered to 35%, Guernsey's 20% tax rate is more than half of the British rate.

That is important because, under British law, offshore subsidiaries of British parent companies must pay British income tax unless:

- The tax rate in the offshore domicile is at least 50% of the British rate.
- More than 50% of the offshore company's business comes from third parties.
- The offshore company returns more than 50% of its profits as dividends to the parent.

Even with staff shortages and taxes, however, at least one British company believes Guernsey surpasses all offshore domiciles for cost and efficiency.

Unigate P.L.C., a major British dairy company, closed its two captives in Bermuda and Gibraltar last year to set up a captive with 3.5 million pounds ($5.1 million) in Guernsey, said Ian Comrie-Smith, group risk and insurance manager for Unigate.

"The cost of doing business in Bermuda was outrageous and there was no point in having two captives," he said.

"We surveyed the entire captive scene and Guernsey was everything we were looking for—stability, a good infrastructure and easy access at a reasonable cost. I can make three trips here for the cost to take one to Gibraltar. And I can't go to Bermuda like I can go to Guernsey to do a half day's work," he said. ■

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The States of Guernsey, the island's unicameral legislative body, conducts its busines from these offices.

Captive thrives in Guernsey climate

Guernsey regulator promises new rules

By STACY SHAPIRO

ST. PETER'S PORT, Guernsey—The Insurance Business Law passed this summer has some holes, which new insurance supervisor Steve W. Butterworth plans to plug with enforcement and regulations.

For example, there is no definition of "insurance" in the new law, Mr. Butterworth told members of the Guernsey Captive Conference Oct. 1-2.

"You can safely assume that if you think that you might possibly be doing insurance business, then you probably are," Mr. Butterworth said.

Also, the law does not regulate the "offshore broker" who is based in Guernsey but places business with a company not based on the island, said Mr. Butterworth, who was deputy superintendent of insurance in the Cayman Islands until this month.

"This is rather ironic, as we had been thinking of bringing this particular category into the Cayman net for some time," he said. "However, it may well be considered that the business of an offshore broker who carries out a contract of reinsurance with an insurer outside Guernsey, e.g. in the Isle of Man, may still come under the definition" of the law.

The new law also appears to exempt an insurer that is running off its business from registering its company with the insurance supervisor, said Mr. Butterworth.

"I am not totally happy with the exemption, as I can envisage a situation. . .where the company is being milked by excessive professional fees—termed consultant fees—to the detriment of the bona fide insurance liabilities, so much so that a healthy-looking company at the commencement of running off may turn out to be unable to discharge all its insurance liabilities," he said.

In such a situation, Mr. Butterworth warned that Guernsey's Advisory and Finance Committee can petition for the company to be wound up.

"I am hoping that these powers will not be used at all and that any problems will be halted and corrected by the local professionals, especially the insurance managers," he said.

Guernsey's new insurance business law, which was passed by Guernsey's unicameral government, the States of Guernsey, on June 25, must be signed by Queen Elizabeth II's Privy Council before it can be enacted. Mr. Butterworth believes it will be signed soon and enacted by Jan. 1.

When it is enacted, all Guernsey captives will have to be registered through the insurance supervisor under regulations that are being drafted by Mr. Butterworth.

Mr. Butterworth believes he will give the nearly 200 captives on the island about two months to register with him, although it will take at least six months to process all the accounts.

"One of the biggest problems for an offshore insurance center when it enacts its first insurance law is the companies which are or were doing business, but do not come forward to be registered," he said. "You never know what they have been doing."

Mr. Butterworth expects that one or two of the current captives will be "weeded out" because the captive's management or assets is inadequate.

But, he believes that most of the captives managed by the nine captive managers belonging to the Guernsey Insurance Company Managers Assn. will comply with the new law and be registered.

Under the new legislation, captives and other Guernsey-domiciled insurers that are not registered with the British Department of Trade and Industry or in another European Community nation must:

- Apply to the island's Advisory and Finance Committee for approval, although these are all reviewed and recommended by Mr. Butterworth. Mr. Butterworth says that in an application for a new insurer, he will ask for information about the directors and owners of the company to make sure they are fit and proper.

If they are totally unknown, "we will ask for references, curricula vitae and evidence of non-criminal activity such as police certificates or, if not available, affidavits," he said.

There should also be a business plan with the application that is "fairly comprehensive in outline showing details of classes of business, risks per occurrence and in the aggregate, expected premium volumes (gross and net), primary insurers, security of reinsurers, any excess or stop-loss coverage, intermediaries, and brokers and agents involved," he said.

'I will be looking long and hard at individual letters of credit,' says Insurance Supervisor Steve W. Butterworth.

- Prove that the company's manager is suitably experienced. Each insurer must have a representative on the island, who can be an executive of the insurer or its management company.

"This is one of the most important aspects of the new law from my point of view," said Mr. Butterworth. "The person should be a fit and proper person who is a director or—if none available—an employee who is ordinarily resident in Guernsey; or an authorized insurance manager."

- Satisfy a solvency margin of 18% for the first 5 million pounds ($7.25 million) of net written premiums and 16% for net premiums exceeding 5 million pounds.

Mr. Butterworth notes that 75% of a non-life captive insurer's assets must be in approved assets. They include cash in hand and on deposit with banks, certificates of deposit issued by banks, Eurobonds, stock, net investment income received, premiums received, reinsurance received and irrevocable letters of credit.

"I will be looking long and hard at individual letters of credit," said Mr. Butterworth.

- Have a minimum paid-up capital of 100,000 pounds ($145,000). "It should be stressed that this is capital—not capital and surplus—and that this is only the minimum required," said Mr. Butterworth.
- File financial statements annually with the government. "The annual return is required within four months after the close of the financial year of the insurer," he said. "I am hopeful that there is a spread of dates used—not all 31 December, or May is not going to be a merry month." ■

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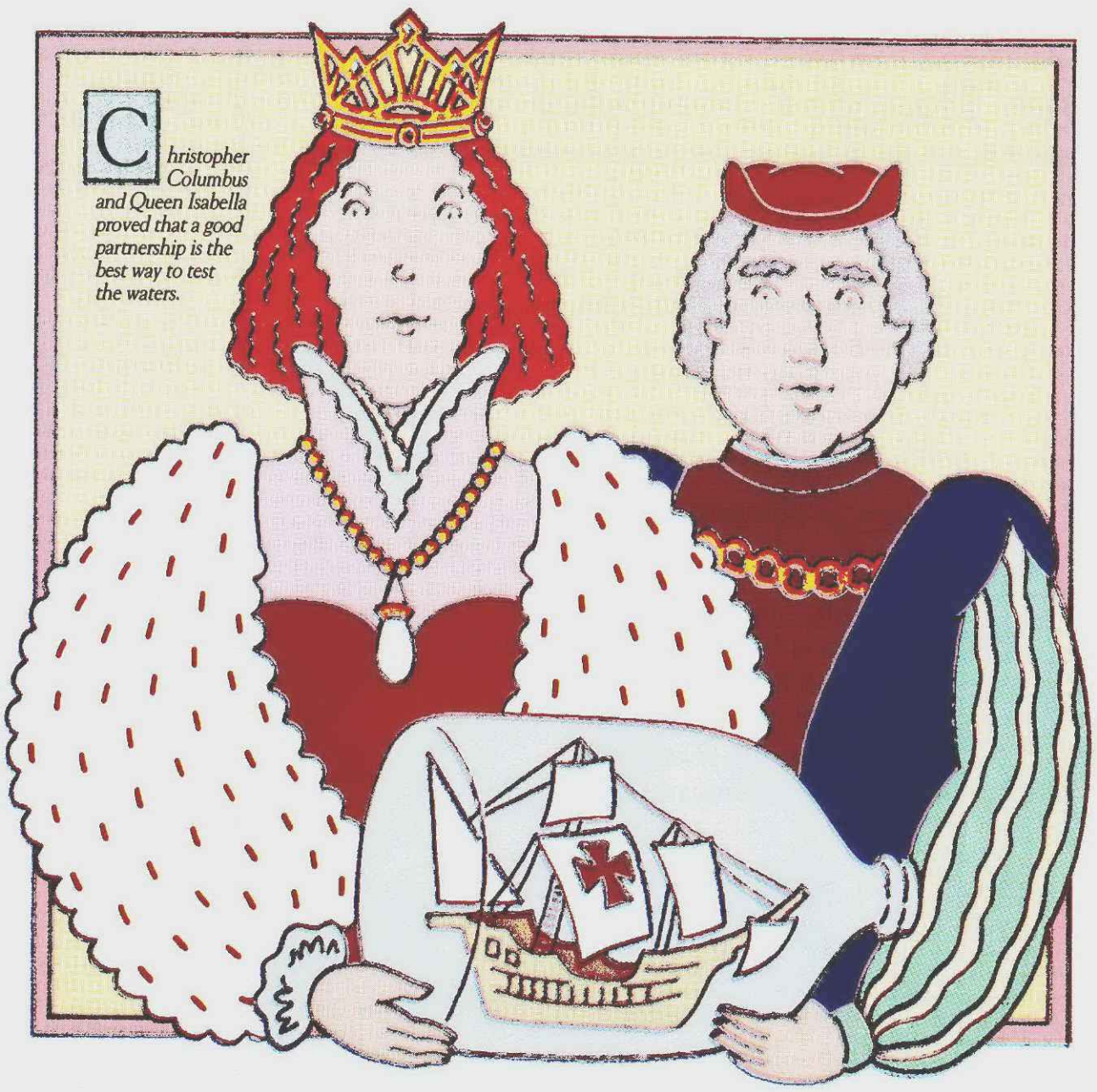

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U.S. insurers leave political risk market

By MICHAEL BRADFORD

Buyers of political risk coverage increasingly are turning to London markets because U.S. political risk markets are disappearing.

A lack of reinsurance support in general—and from London in particular—has pushed many U.S. political risk insurers out of the market entirely, while forcing those that have remained to reduce the amount of coverage they offer.

U.S. markets also have hiked the premiums they charge for the coverage, but insurers and brokers could not provide an average figure because rates fluctuate greatly depending upon the country where the risk is insured.

Meanwhile, while cutting back on the amount of political risk coverage it will write on a reinsurance basis, London underwriters of political risk insurance are writing nearly the same direct limits for the coverage that they wrote last year—and at about the same rates.

London underwriters have not been dependent on reinsurers, writing more coverage on a net basis.

"It's hurt the consumer," said Ed Santos, vp of Fred S. James' financial products division in New York. "They are forced to deal with Lloyd's, and Lloyd's knows that."

The cost of political risk coverage written by commercial insurers depends primarily on the type of risk involved and the country in which the policyholder has an exposure.

For example, underwriters say that any coverage written in Nigeria, Libya, Iran, Iraq or certain politically unstable South American nations would be more expensive than coverage for political risk exposures in other countries because of the potential for strife.

And, if the risk involves the export of a luxury item, the insurer likely would demand a higher premium because foreign governments may block payment to exporters for those items when cash flow in the country is limited.

Political risk coverages provide protection for a company's goods or assets from loss due to political strife.

A widely-written political risk product is contract frustration insurance, which covers losses sustained because of the cancellation or repudiation of contracts as a result of political acts by the government of a country in which the policyholder was conducting business.

Other popular political risk products include:

- Protection from confiscation, expropriation and nationalization of assets by a foreign government.
- Unfair calling of letters of credit.
- Currency inconvertibility.
- Supply-interruption, which guarantees shipment of goods by a foreign government.

Export credit insurance also is available, although it is not commonly regarded as a "pure" form of political risk insurance. The coverage protects against losses from non-payment for goods after they have been received by a foreign buyer. Such losses often stem from political unrest.

Reinsurers have backed away from political risk exposures primarily because "the general capacity crunch which afflicted all product lines tended to afflict non-conventional lines even greater than conventional ones," noted Bob Svensk, president of Trade Credit Underwriters Agency Inc. in New York, which previously wrote export credit insurance on behalf of Aetna Life & Casualty Co. in Hartford, Conn.

"If the property/casualty industry gets the sniffles, exotic lines get a cold. The cold leads to pneumonia," Mr. Svensk observed.

So far, losses do not seem to be a major cause of the tighter U.S. market.

While members of the political risk marketplace generally are reluctant to discuss losses, some said there are a few brewing that could have an adverse effect on capacity for the coverage in both the United States and London.

Julian Radcliffe, a political risk specialist and director of Lloyd's broker Hogg Robinson Group P.L.C., said the market has sustained several losses and that there are more potential losses in the Middle East, North Africa, South America and Nigeria.

"I think the greatest are exchange transfer problems," Mr. Radcliffe said, referring to potential currency inconvertibility losses.

Meanwhile, Lloyd's of London continues to keep the pressure on U.S. political risk insurers by not providing them with reinsurance support, Mr. Santos noted. When U.S. insurers have to turn the business away because of lack of reinsurance, it winds up in the London market, Mr. Santos pointed out.

"Lloyd's and the European market are making a ton of money on our business," he said.

And American reinsurers are not showing leadership that could keep that business from flowing to London, Mr. Santos charged.

"The U.S. market is hurting itself by creating a position where all the business goes to London," he said. If reinsurers would provide support for political risk exposures, they would find that the business would provide "a very profitable account," Mr. Santos predicted.

But, Mr. Radcliffe of Hogg Robinson explained that the London market in some cases is not eager to reinsure business that otherwise would flow to it on a direct basis.

"Traditionally, Lloyd's underwriters have had to consider whether to reinsure companies in the states that will compete with them on a direct basis," he noted.

Some Lloyd's underwriters may provide support for American insurers writing political risk coverage while others may refuse that support and hope the business finds its way to London on a direct basis, Mr. Radcliffe said.

In London, Lloyd's brokers and underwriters say there is still substantial capital available for "good" risks.

"There are still some countries or contracts that would be difficult to obtain coverage for," Mr. Radcliffe noted. "But there is a reasonable responsiveness" on the part of underwriters to quote most risks.

Mr. Radcliffe stressed the importance of buyers "making contact on a contract, earlier rather than later." Underwriters need "a good advance on how to structure a contract," he explained.

Two of the newer entrants into the London political risk arena are PanFinancial Insurance Co. Ltd. and Trade Indemnity P.L.C.

PanFinancial began underwriting in January. "Our experience has been very good. We have acquired an encouraging measure of support from reinsurers," noted Martin Roberts, managing director and one of the founders of the company.

According to Mr. Roberts, PanFinancial covers a broad spectrum of political risk exposures, and offers policyholders limits of up to 3 million pounds ($4.35 million at current exchange rates).

He stressed that PanFinancial offers insurance in "single contract situations, insurance for specific deals."

Dennis L. Howson, general manager and underwriter with Trade Indemnity, said his company has a somewhat different approach to writing the coverage. At Trade Indemnity, coverage is not written on an individual basis but as an addition to a client's other export credit insurance.

Trade Indemnity has been a British credit insurer since 1918 and began offering political risk insurance last year.

While Mr. Howson did not disclose available limits, he said the insurer is "fairly generous. We've not yet had a problem with capacity within them."

Since it began writing political risk in 1985, Trade Indemnity is seeing a greater demand for the coverage, according to Mr. Howson.

Anthony Palmer, marketing director at political risk broker Berry, Palmer & Lyle Ltd. in London, agreed. "Demand is strong, maybe stronger than ever," for the coverage, he noted.

But, "what we're seeing is less of a demand in the Middle East and oil-producing countries because of the collapse of oil prices," Mr. Palmer said.

As oil prices have fallen, companies have lost interest in operating processing plants in oil-rich areas, he explained.

"For the right business, there is appropriate coverage," Mr. Palmer claimed.

For example, Berry, Palmer & Lyle is placing coverage with limits of $100 million "even in difficult countries," Mr. Palmer said.

The market "in the states is certainly going through a difficult period," he said. "In London, it is basically in sound condition."

But as U.S. underwriters and brokers bemoan the absence of reinsurance in the United States, one reinsurer says the policy underwriting has to be improved before reinsurers can begin offering more support for political risks.

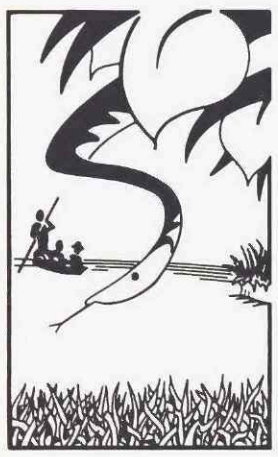
"There has got to be a tightening up of policy forms," said Frank Dameo, vp of facultative reinsurance for Resolute Reinsurance Co. in New York.

A problem with current policies "is that any act by a sovereign government is construed as a political act and is covered," he said.

Continued on next page

Challenge #95

"My clients are going to explore some of the wilder reaches of the Amazon for 6 weeks. Can they be insured for $2,000,000?"



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Challenge #37

"My client says that his voice is worth $50,000 a month to him. What do you say?"

We said "Fine," and responded with a same-day competitive quote on an Individual Disability Income policy Including Loss of Voice coverage for this noted New York radio/TV broadcaster. The policy was written for a 5-year Term including a 5-year Indemnity Period, a 90-day Elimination Period and a $50,000 per month Benefit.

* * *

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Challenge #101

"Another company's recent disaster has prompted our client to require immediate coverage for Aviation Accidental Death Insurance on crews going to and from – and working on – offshore oil rigs. What do you say?"

We responded with a competitive same-day quote for this major oil company for its offshore rig crews throughout the world. The policy was written - Sum Insured: 2 times salary.

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In addition, auditors and captive managers can work together to make this job easier, he noted. After all, he said, an auditor "is required to express an opinion as to whether the accounts show a true and fair view. If a captive's owners and managers are unable to state this, then they cannot expect the auditor to do so." ■

Continued from previous page

Political risk policy forms "have to be tightened so that they only include overt political actions on the part of the government, rather than arbitrary political decrees or actions," he explained.

Insurers currently writing political risk coverage actually are covering "financial business risks" instead, Mr. Dameo said.

"We're too often paying losses because a government arbitrarily said, 'We're not going to pay you.' That's not the intent of political risk."

He explained, for example, political risk coverage should apply when a policyholder sustains a loss because of a politically motivated government action, such as the embargo the U.S. government imposed on Nicaragua in May 1985 (*BI*, May 27, 1985).

If policy forms are rewritten to focus on more narrow exposures, reinsurance support likely will return to the marketplace and create new capacity, Mr. Dameo predicted.

Mr. Dameo noted that Resolute is offering reinsurance "on a limited basis," to primary insurers of political risks.

Commercial insurers also hope to obtain some reinsurance support from the Overseas Private Investment Corp., the federal agency that provides political risk insurance to companies investing in developing nations—including coverages for expropriation, inconvertibility and war, revolution, insurrection and civil strife exposures.

Legislation signed in 1985 extending OPIC's authority to write the coverages included a section that allows the agency to establish a pilot program to reinsure commercial insurers underwriting political risks.

OPIC insured exposures worth approximately $5.3 billion in fiscal 1985, up 23% from $4.3 billion in 1984.

And, the legislation that extended OPIC's authority also allows the agency to write business interruption coverage on political exposures. OPIC is waiting for "the final okay" from Congress to begin writing the coverage, according to an OPIC spokesman.

The program would allow OPIC to assume on a facultative basis a maximum exposure of $50 million per country with a $150 million aggregate limit.

The OPIC spokesman said a committee comprised of OPIC officials and members of the insurance industry is scheduled to establish the pilot program by the end of the year.

But interest in OPIC programs has diminished recently because of changing world trade patterns (see story, page 114).

OPIC's counterpart in the United Kingdom is the Export Credits Guarantee Department, a British government agency that underwrites the same political risk coverages written by the private sector, as well as other commercial risks.

ECGD writes 90% of all the insurance placed in London for British exporters. A spokesman for the ECGD said the agency expects to insure business valued at around $16 billion pounds this year—about the same as in 1985.

The spokesman said the agency's market share has actually dropped slightly because of the same reasons affecting its U.S. counterpart, OPIC. "The pattern of trade is changing," he noted.

Brokers and underwriters say that besides Lloyd's and OPIC, only two U.S. markets are providing any significant capacity for political risk exposures: American International Group Inc. of New York and UIC Ltd., the underwriting manager for North River Insurance Co. in Morristown, N.J., a unit of Crum & Forster.

Insurers currently writing political risk coverage actually are covering 'financial business risks,' Mr. Dameo says: 'We're too often paying losses because a government arbitrarily said, "We're not going to pay you." That's not the intent of political risk.'

Other sources have withered in the past 18 months.

And even AIG, the major U.S. political risk market, has not gone unscathed by reinsurance constrictions.

John Salinger, president of AIG's political risk division, said the insurer has been affected by the loss of reinsurance capacity and now is offering limits of $35 million on confiscation risks and $30 million on contract repudiation covers.

Last year, available limits on those covers were approximately $45 million, he noted.

While Mr. Salinger did not disclose how much political risk coverage AIG writes, he said it is "a fairly substantial amount."

At New York-based UIC, buyers generally can find $3 million to $5 million in coverage, depending on the type of risk and the country involved, according to David D. Avasthi, president.

In fact, UIC can provide limits of $6 million to $8 million with facultative and treaty reinsurance support, but Mr. Avasthi said he currently is not offering the full limits.

UIC writes "the whole gamut" of political risk coverages, except insurance of commercial credit risks, Mr. Avasthi noted.

And, sources say that Chubb Group also writes political risk coverage but has reduced capacity. Officials at Chubb could not be reached for comment.

CIGNA Corp. of Philadelphia is one of several markets that has stopped writing political risk coverage.

Last year, CIGNA experienced problems renewing its treaty reinsurance for political risk coverages and saw a proposal to write a $900 million policy to cover foreign loan exposures for Citicorp fall through because of lack of reinsurance support (*BI*, Feb. 11, 1985).

Trade Credit Underwriters Agency no longer is writing export credit insurance on behalf of Aetna Life & Casualty Co. because of the lack of reinsurance support, Mr. Svensk explained.

"Basically, TCU is winding up its affairs," Mr. Svensk said. "Administration of the program is being taken over by Aetna."

TCU wrote political risk coverage solely for Aetna, Mr. Svensk explained.

While TCU is not accepting any new business, Aetna will continue to "process all the transactions in the pipeline," Mr. Svensk noted.

And the Hartford-based insurer will decide later whether to resume accepting political risk submissions, according to Mr. Svensk, who now is a consultant for Aetna.

Capacity offered by TCU varied, with no upper limits established for business that was considered acceptable, if adequate reinsurance was available, Mr. Svensk said. The agency wrote "a couple of million in premiums" after opening for business in 1985, he noted.

TCU experienced no losses on the business it wrote, he said.

Athena Assurance Co., a member of the St. Paul Group, also has stopped offering the coverage. ■

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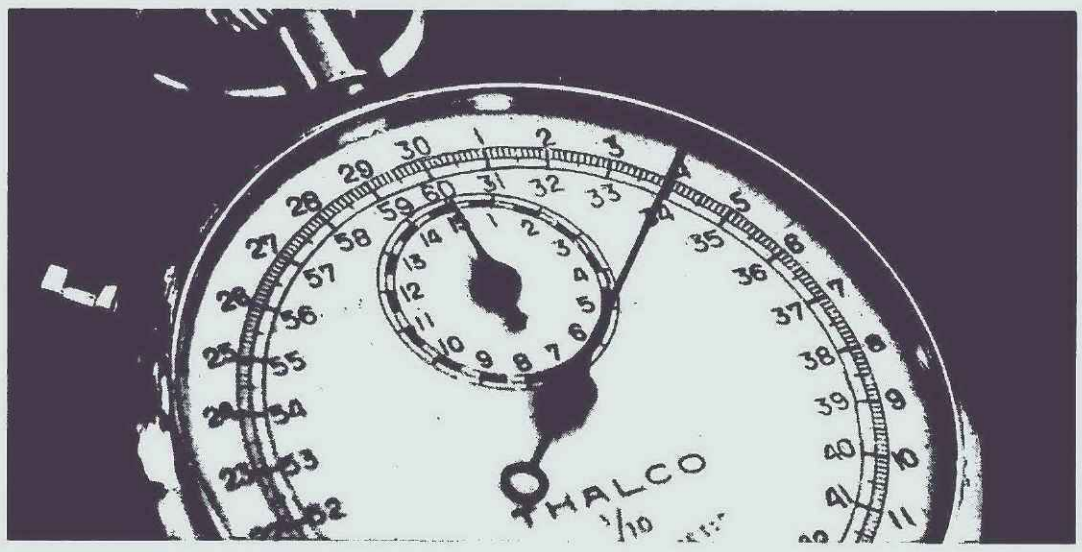

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Markets underwriting political risk coverage

The list of markets underwriting political risk insurance is shorter than in previous years. Insurers still providing the coverage include:

- American International Group, 70 Pine St., New York, N.Y. 10270; 212-770-7000.
- North River Insurance Co. in Morristown, N.J. Contact underwriting manager UIC Ltd. at 1 World Trade Center, Suite 2049, New York, N.Y. 10048; 212-466-9070.
- The Overseas Private Investment Corp., 1615 M St., Washington, D.C., 20527; 202-457-7010.
- Export Credits Guarantee Dept., Aldermanbury House, Aldermanbury, London EC2P 2EL; 1-382-7000.
- PanFinancial Insurance Co. Ltd., World Trade Center, 1 St. Katharine's Way, London, England E19UN; 1-481-3122.
- Trade Indemnity P.L.C., Trade Indemnity House, 12-34 Great Eastern St., London, England EC2A 3AX; 1-739-4311.

Government agencies writing less insurance

By MICHAEL BRADFORD

Public agencies in the United States and United Kingdom that underwrite political risk insurance are writing less of the coverage because buyers increasingly are operating only in "safe" countries.

As a result, businesses are buying less coverage to protect the goods they ship to those countries and the projects under development in those areas, according to spokesmen with the Overseas Private Investment Corp. in Washington and the Export Credits Guarantee Department in London.

"Our market share is falling, sadly," said an ECGD spokesman. "One of the reasons is trade in the United Kingdom is changing. More exports are going to Western Europe and North America—the safer areas."

The ECGD reported insuring exposures valued at $16 billion pounds ($23.4 billion at the appropriate exchange rate) during the fiscal year ended March 31, after writing $17.8 billion pounds ($26.3 million) during the previous fiscal year.

A spokesman for OPIC concurred with his London counterpart, saying, "We've experienced a fall-off," in the amount of coverage written to protect exporters against losses as a result of political strife.

The OPIC spokesman said the slowdown in petroleum production is the main reason his agency has seen fewer requests for coverage.

"Everybody was screaming about the shortage of oil and everybody was looking for new sources," in emerging nations, he explained. "Now, all of a sudden, there is no shortage of oil and businesses have stopped looking at exploration." And, "because of the general economic slowdown," businesses are more cautious about expenditures, he said.

Because OPIC's fiscal year just ended Sept. 30, the agency could not supply figures detailing how much coverage has fallen off from last year, when OPIC wrote a record level of coverage. The agency covered $5.3 billion in political risk exposures in fiscal 1985, up 23% from the $4.3 billion written in fiscal 1984. Coverage was written for 140 projects, compared with 124 in the previous year.

OPIC, which encourages investments in developing nations by providing insurance and other financial assistance, recorded $100 million in net income in fiscal 1985, the agency's most productive year. That figure is up from $97.2 million the year before.

OPIC reported $33 million in premium volume and $32.2 million of net revenues from premiums in fiscal 1985. The agency paid 22 currency inconvertibility claims in 1985, with payments totaling $16.8 million. Inconvertibility claims are the most common paid by OPIC.

The agency also offers coverage for expropriation risks and for exposures related to war, revolution, insurrection and civil strife.

In addition, Congress in 1985 gave OPIC the authority to put together coverage against business interruptions due to political problems.

OPIC is developing a definition of the coverage and will submit its proposal to Congress for final permission to underwrite the insurance, which the spokesman said may be available by early 1987.

OPIC also is developing a pilot program to underwrite reinsurance for commercial risks. It expects to have the program in place by the end of this year and could write facultative coverage of $50 million per country, with a $150 million aggregate limit.

Rates for OPIC coverage have not changed in the last year. Unlike private market insurers, whose rates are based partly on the safeness of the country where an exposure is located, OPIC ignores that factor when setting prices. Instead, its rates are geared to "the nature of the investor's undertaking and the project's risk profile," according to the agency. Typical rates for each $100 of coverage underwritten by OPIC are 30 cents for inconvertibility insurance and 60 cents for expropriation and war, revolution and insurrection coverage.

Civil strife can be obtained only as a rider to the war, revolution and insurrection coverage. It costs 15 cents per $100 of coverage.

OPIC will issue coverage for investments in more than 100 "less-developed" countries. Buyers are required to bear at least 10% of any loss and may be required to coinsure an even higher percentage in some cases.

In legislation authorizing OPIC, the agency is directed to show a preference for small businesses, or those businesses with annual sales volumes less than that of a Fortune 1000 company.

In London, despite the reduction in the amount of coverage it wrote last year, the ECGD still insures approximately 90% of all insured exports there. However, that agency operates differently than OPIC.

The ECGD offers buyers both commercial and political risk insurance under one policy. It covers an exporter for non-payment if the buyer becomes insolvent or defaults, or if non-payment results from government action.

Generally, coverage written by the ECGD guarantees payment within six months of the dispatch of goods bound for another country.

The ECGD normally covers 90% of losses due to buyer insolvency or default. If the loss is for other reasons, the ECGD generally pays 95% of the loss. In fiscal year 1984-85, the ECGD paid 650 million pounds ($951.9 million) in claims.

In the United States, buyers of export credit coverage also can find the insurance through New York-based Foreign Credit Insurance Assn., a private market agency that underwrites on behalf of the Export-Import Bank, a government-sponsored insurer that offers exporters insurance coverage, loans and guarantee programs.

The Eximbank introduced in early October for U.S. exporters a new short-term policy that allows exporters to buy both political and commercial coverage on particular risks. The coverage can be issued for a one-time sale or for a series of shipments to the same buyer. Premiums are based on risk assessments by the agency and insurer.

Previously, short-term coverage was available through FCIA only if the exporter insured all its export credit sales through the agency.

The Eximbank said it has received requests for quotes on more than $120 million in coverage under the new policy.

In another development, John A. Bohn Jr., Eximbank president and chairman, has announced that Eximbank plans to "provide broadened insurance coverage for exporters, especially small exporters . . ."

Mr. Bohn said individual exporters and those working through trade associations will soon have greater access to coverage through the Eximbank.

Speaking recently to electronics industry representatives, he said, "We have been working to develop a prototype trade association policy that will insure the export credit sales of member companies." ■

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Banks join the market as political risk brokers

By MICHAEL BRADFORD

Despite the disappearance of U.S markets willing to underwrite political risk coverage, banks are entering the marketplace as brokers.

Units of bank holding companies BankAmerica Corp. of San Francisco and Citicorp of New York currently are active as political risk brokers.

In addition, two other major banks probably will join the ranks of political risk brokers by early 1987, according to Thomas A. Cook, chief executive officer of New York-based Cook & Miller International Ltd., a brokerage specializing in international business. He did not name the two banks.

And, at least one of the banks planning to develop a brokerage division has long-term plans to begin underwriting political risk coverages, Mr. Cook noted.

Mr. Cook said there is "significant interest" among banks to enter the political risk marketplace because it is a source of additional income and gives the banks a competitive advantage.

Banks are allowed to provide brokerage services under authority granted by the Edge Act. That legislation, enacted in 1919 and amended in 1978, allows U.S. banks to form subsidiaries specializing in international banking activities.

Under the act, banks can broker coverage for companies with non-U.S. foreign exposures.

Banks are permitted to set up underwriting operations—only for overseas exposures—under provisions of the 1982 Export Trading Company Act.

BankAmerica Insurance Brokers Inc. in New York recently celebrated its first anniversary as a political risk broker, and Susan Mashkes, managing director, claimed that the broker's first year in business was a success.

In addition to the New York unit, the bank holding company formed BankAmerica Insurance Brokers Ltd. in London last year to place political risk coverage for overseas clients of BankAmerica.

Ms. Mashkes did not reveal how much coverage has been placed in the past year. But, she said most of the insurance was contract repudiation coverage and insurance to protect against confiscation of assets by a foreign government.

She said clients purchasing the confiscation coverage are those "who purchase a commodity in a country and have to warehouse it there." The coverage, she explained, protects the policyholder's assets from confiscation while it is still in that country.

Most of the contracts placed by BankAmerica are "two- and three-year deals," said Ms. Mashkes. Business brokered has not yet produced losses for underwriters, she added.

Coverage is placed with insurers that "provide the best terms," Ms. Mashkes said, although she acknowledged that only a few markets are actively writing the insurance. "We offer it to the entire market, and the one with the best rate is the one we go with."

She pointed to American International Group and UIC Ltd. as markets in New York that are still actively writing political risk coverage. UIC is an underwriting manager for North River Insurance Co. in Morristown, N.J., a unit of Crum & Forster.

In London, Ms. Mashkes said coverage often is placed with Lloyd's of London syndicates and PanFinancial Insurance Co. Ltd.

About the same time BankAmerica was putting together its brokerage subsidiaries, Citicorp was entering the U.S. market.

Citicorp hired Peter Clark, a former underwriter with the Overseas Private Investment Corp., to head its political risk division. OPIC is the government agency in Washington that provides political risk coverages for U.S. exporters.

Mr. Clark could not be reached for comment on Citicorp's political risk brokerage operations.

Citicorp entered the brokerage business in 1984. when it acquired Lloyd's of London broker Grindlay Brandts Insurance Brokers Ltd. (*BI*, June 11, 1984). The name of the brokerage was changed to Citicorp Insurance Group. ■

Consumer group blasts insurance report

WASHINGTON—A Justice Department report on the liability insurance crisis completely mischaracterized punitive damage awards, the Consumer Federation of America charges.

Contrary to the Justice Department's assertions, punitive damage awards have been used sparingly and properly by juries, according to a CFA report written by Dr. Mark N. Cooper.

The CFA is a Washington-based coalition of more than 200 consumer organizations.

"Punitive damages are unique because they are intended to punish wrongdoers, not to compensate victims," Dr. Cooper said. "The fact that they have been used so carefully by juries is another important piece of evidence against current efforts to change our civil justice system."

A previous CFA report "demonstrated that overall jury awards have not increased out of proportion to basic economic and social change," said Gene Kimmelman, CFA's legislative director.

"This new report shows that one of the most unusual legal remedies has not been abused by juries," he said.

The CFA report, using results from two recent surveys of jury verdicts, concludes:

- Punitive damages are awarded in only 2% or 3% of all cases.
- The awards are made in the proper instances—intentional tort and business contract cases.
- The magnitude of awards appears to be reasonable.

"The Department of Justice's analysis is so careless and biased that it borders on pure deception," Mr. Kimmelman charged. "If the Department were a private company disseminating such misinformation, its behavior would constitute a violation of Federal Trade Commission standards for accuracy in advertising.

"Unless and until much more careful and unbiased research shows that jury verdicts are the cause of problems in liability insurance, legislators should refuse to make changes in tort law," he said.

Robert Willmore, deputy assistant attorney general, described some of the CFA's accusations as "nonsense" and called the group's report "distorted, not objective and unreasonable."

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A&A asks court to move Pine Top suit to London

By DOUGLAS McLEOD

The A&A parties argue that the 'vast majority' of key witnesses and documents in the case are in London.

NEW YORK—Alexander & Alexander Services Inc.—accused with several others of fraud in court actions brought by Pine Top Insurance Co. Ltd. and DR Insurance Co.—is trying to have the lawsuits moved to a British court.

Pine Top, a London-based unit of Greyhound Corp., sued A&A, its London subsidiary Alexander Howden Holding P.L.C., several Howden-related entities and others last December, alleging violations of the federal Racketeer Influenced and Corrupt Organizations Act (*BI*, Jan. 13).

The suit, filed in U.S. District Court for the Southern District of New York, charged that the defendants conspired to strip excessive commissions from books of association and amusement park liability business reinsured by Pine Top between 1978 and 1982.

According to the complaint, the defendants controlled the underwriting of some of the business on the primary level by placing it with American Special Risk Insurance Co. and Atlanta International Insurance Co., both units of Alexander Howden.

Some of the business was written on the primary level by Ideal Mutual Insurance Co., also a defendant in the Pine Top suit.

Howden then reinsured portions of these risks with Pine Top using a sub-broker, Charman Mauduit (Insurance Brokers) Ltd., in which Howden officials had an undisclosed interest, the complaint says. Charman Mauduit's successor firm, Peter J. Charman & Co. Ltd., also is named as a defendant.

The suit charges the defendants stripped additional commissions from the business by controlling the brokering and underwriting of Pine Top's own retrocessions to Beacon Insurance Co. and Ajax Insurance Co., both of which have been declared insolvent.

The complaint further alleges that the retrocessions to Beacon and Ajax, brokered by Howden and Charman Mauduit, were bound through:

- Colin Bird, Howden's former managing director for North American operations, who had a personal binding authority for Beacon.
- B.F.G. Toomey Associates (Underwriting Agency) Ltd., in which Mr. Bird had an undisclosed interest.
- Three Bermuda-based underwriting management companies, including Alexander Underwriting Agencies Ltd., which was jointly owned by A&A and Howden; and SDU Ltd. and Hamilton Underwriting Agencies Ltd., both owned by Howden.

All of the above are named as defendants in Pine Top's complaint, which demands $21 million in actual damages. The amount of actual damages could be trebled under RICO.

Answers were filed earlier this year on behalf of A&A, Howden, several related companies and Mr. Bird, according to David Jones, a staff attorney with A&A. The answers denied Pine Top's allegation and asked that the complaint be dismissed.

In addition, American Special Risk and Atlanta International filed counterclaims against Pine Top, charging breach of contract for failing to pay the two insurers' claims. The counterclaim also asked for a declaratory judgment that Pine Top is bound by its reinsurance agreements with the two insurers.

After the answer was filed, the "Alexander parties"—A&A, Howden, Howden-related entities and Mr. Bird—also asked the court to dismiss the complaint on the grounds that a U.S. court is an inconvenient forum for settling the dispute.

In seeking to have the case moved to London, the Alexander parties argued that most of the transactions involving Pine Top took place in London and the "vast majority" of key witnesses and relevant documents are in London.

The Alexander parties also argued that the U.S. District Court probably would have to apply English law to determine the rights and duties of the various parties, and that the case should therefor be moved to a court more familiar with that law.

Noting that Pine Top would lose the opportunity to bring a RICO claim—and the possibility of collecting treble damages—if the case is moved to London, the Alexander parties argued that this nevertheless is insufficient reason to keep the litigation in the United States.

At the same time that the Alexander parties filed their motion to dismiss the Pine Top complaint, five of the A&A companies also filed a similar motion to dismiss a counterclaim brought by DR Insurance Co., a unit of National Distillers & Chemical Corp.

National Distillers in 1983 sold its captive subsidiary, Elkhorn Re Insurance Co., to Delta Holdings Inc., which then changed the reinsurer's name to Delta America Reinsurance Co. As part of that deal, DR, another National Distillers captive, agreed to assume all of the former Elkhorn business that had been produced by Stetzel Thomson & Co. Ltd., a now-defunct London intermediary.

American Special Risk, the Howden-owned insurance company, sued Delta Re in U.S. District Court in Manhattan in 1984 to recover losses that had been reinsured by Elkhorn/Delta Re through Stetzel Thomson. American Special Risk added DR and National Distillers as defendants after the Kentucky Insurance Department declared Delta Re insolvent in 1984.

After Pine Top filed its RICO lawsuit last December, DR filed a similar counterclaim against American Special Risk, A&A, A&A of New York Inc., Alexander Howden Insurance Brokers Ltd. and Atlanta International, the other Howden-owned insurer, court papers say.

Of the 75 association and amusement park risks at issue in the Pine Top lawsuit, 15 were originally insured by American Special Risk and Atlanta International, reinsured by Delta Re and then retroceded to Pine Top. Pine Top then retroceded the risks to other reinsurers including Beacon and Ajax, court papers say.

Like the Pine Top complaint, DR's counterclaim charges that the five defendants conspired to strip excessive commissions from business on which they controlled the brokering and underwriting, and that they fraudulently concealed material information during the placement of the risks, court papers say.

The five A&A defendants last month asked the court to dismiss DR's counterclaim on the grounds that London would be a more convenient forum to pursue the litigation.

Noting that DR's allegations are basically identical to Pine Top's and that they involve some of the same risks, the A&A defendants put forth the same arguments for dismissal, including that most of the needed witnesses and documents are in London and that the possible loss of treble damages under RICO is not reason enough to keep the litigation in New York.

Before DR filed its counterclaim, Delta Re had tried to have the American Special Risk lawsuit moved to London on the grounds that the U.S. court was not a convenient forum. (*BI*, March 4, 1985.) American Special Risk opposed this move, and the court ruled against Delta Re in May.

However, the A&A defendants now argue that DR's counterclaim has changed the nature of the litigation—in part by bringing in London-based Howden as a defendant—and that the U.S. court should allow the case to move to London notwithstanding its previous order that it remain in New York. ■

Marilyn Tomasko, M.D., a specialist in Allergy and Clinical Immunology—and a Rush Contract Care physician.

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Industry view

Continued from page 1

bowling, horseshoe pitching and swimming), mingle at elegant cocktail parties and dinners (black tie for the gentlemen and fashionable evening dresses for the ladies) and gather for early morning sessions (on such topics as tax reform, tort reform and the trials and tribulations of the agency system).

Discussions about business conditions are by no means restricted to the early morning sessions. Observations about the state of the market are as likely to be exchanged at the ninth hole of the beautiful Lakeside golf course as from the podium of the Chesapeake Hall.

This year, especially, cocktail chatter and dinner conversation turned to market conditions as everyone anxiously sought out signs of change.

A few of the industry leaders were willing and available between appointments and events for on-the-record interviews. Almost all, however, were more than happy to share their insights in a brief conversation and on a not-for-attribution basis. Taken together, these comments suggest changing conditions in the marketplace, but confusion about how dramatic the changes are.

"The market is becoming competitive again" declared the president and CEO of one of the largest U.S. brokers in the United States during a cocktail party Sunday evening.

"The insurance companies are talking to us again. We no longer have leprosy," he said, recalling that just 12 months ago at The Greenbrier insurers were turning a deaf ear to the brokers' capacity complaints.

An executive of another large retail brokerage reported: "We've lost two accounts on price."

"Insurers are talking about market share," confided another brokerage executive, noting that some insurers also are beginning to talk about incentive programs to induce brokers to produce business for them.

But while a few brokers talked about losing accounts based on price, Peter Pruitt, president of Frank B. Hall & Co. Inc. in Briarcliff Manor, N.Y., was quick to point out that accounts he has seen move for price haven't involved price cuts—just smaller increases in premium.

Mr. Pruitt

Also, he noted, a broker can lose an account now to a competitor who can put together a larger program, reflecting increasing capacity.

There is, Mr. Pruitt said, competition on the price of property insurance, "but there is no relaxing of underwriting standards," which he called a "good" development.

And, capacity is increasing for excess liability insurance. In the area of $20 million excess of $5 million "you can do more," Mr. Pruitt said.

Mr. Pruitt also said he has detected a change in the "attitude" of insurers. "More and more insurers are calling us, saying they want to target industry groups."

"This is good as long as they keep their underwriting standards—and they are," Mr. Pruitt said.

While these changes in the market "are not dramatic," according to Mr. Pruitt, "they are occurring earlier than I thought they would have come," he said. "I thought it would be 1988."

Not only the national brokers detect changing market conditions.

"Last year, we would get one quote—from the incumbent carrier who was trying to be nice to us," recalled Ted Adams, president of T.J. Adams & Associates Inc. in Oak Brook, Ill., a regional broker with about 40 employees.

"Now we can get two or three quotes."

But while "companies are more willing to write more business," Mr. Adams says "pricing is holding firm in the casualty area."

And, he notes, "I'm not aware of a bunch of wild competition out there."

"It's not a buyers market yet," assured another broker. "But 18 months from now, it will be soft," he predicted.

Brokers do not advocate a return to a hotly competitive market. As Mr. Adams said, "I hope the soft market is not upon us already."

Walter A. Rhulen, president of Rhulen Agency Inc. in Monticello, N.Y., says if the insurance industry returns to "ridiculous price cutting not based on anything—they deserve what they get."

Insurance company executives pledge they are not now and will not return to engaging in wild price competition that marked the early 1980s' insurance marketplace.

Mr. Bailey

William O. Bailey, president of Aetna Life & Casualty Group in Hartford, Conn., characterizes current market conditions as "stabilizing."

"While we have further progress to make before balance sheets are restored and availability is less of an issue, the future will almost surely be less traumatic for our customers," Mr. Bailey observed in opening remarks to the joint NACSE/NACSA meeting. "This will be a welcome relief," he added.

And, in remarks two days later closing the final day's panel discussion, Mr. Bailey commented, "I don't think the next cycle is going to be anywhere as severe. . .and it has not begun."

An "easing of price escalation," Mr. Bailey pointed out, "is not a soft market. A soft market is when you cut prices 25% and you ought to be raising them."

William M. McCormick, chairman, president and chief executive officer of Fireman's Fund Insurance Cos. in Novato, Calif., who also was a

Continued on next page

Tax reform hits insurer 'savings'

The Tax Reform Act of 1986 hits the insurance industry where it should not be hit, contends a leading economist.

Forcing property/casualty insurers to discount their loss reserves hits at the "savings" of the insurance business, claims Alan Greenspan, president of Townsend-Greenspan & Co. in New York and a member of President Reagan's Economic Policy Advisory Board.

In the insurance industry, savings are the loss reserves built up to pay losses in the future, foregoing current consumption. And, a tax increase of about $1.5 billion per year on property/casualty insurers "hits us where we shouldn't be hurt—in the key area of savings," he said.

"A major problem in the United States is that we do not save enough," Mr. Greenspan asserted in remarks to a joint meeting of the National Assn. of Casualty & Surety Agents and the National Assn. of Casualty & Surety Executives held earlier this month at The Greenbrier.

While in the past the U.S. economy was growing at such a rate it could afford a lower savings rate than other economies, that is no longer true, Mr. Greenspan said.

William O. Bailey, president of Aetna Life & Casualty Group, in introducing Mr. Greenspan, noted, "The tax reform bill will cost the property/casualty insurance industry dearly—an estimated over $7 billion in additional taxes over the next five years.

"I see no alternative but to pass these costs along to our customers as every other business must do," Mr. Bailey said.

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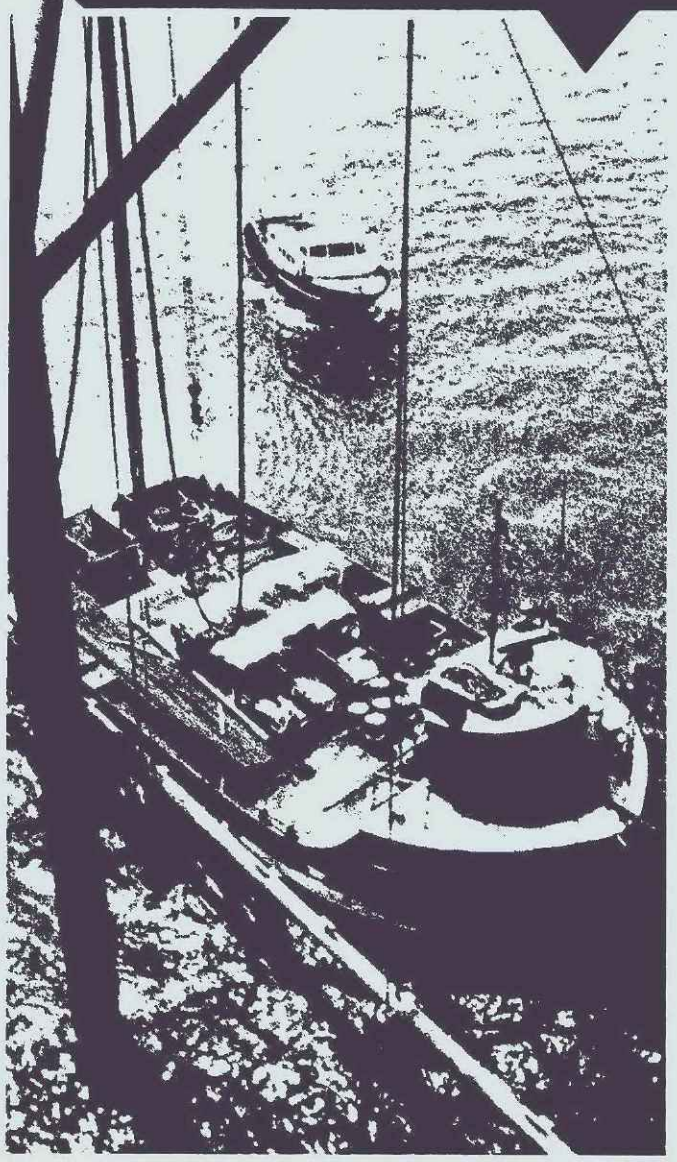

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Industry view

Continued from previous page

member of the closing-day panel discussion, observed: "I predicted most availability problems would be solved by the end of this year, and I think that's true, except for very long-tail, very risky business."

After the panel Mr. McCormick told *Business Insurance* "the rate of increases is starting to abate. We'll have a stable market for the next couple of years," although, he added, there will be changes by line of insurance.

Mr. McCormick

For example, "property rates are ceasing to go up," which he said was appropriate. But, he predicted "reinsurance is going to be tighter next year."

And, he pledged, "the last thing we will do is cut price to get share."

Acknowledging that the big rate increases and restructuring of lines of business was 'awful for our customers," Mr. McCormick said the industry needed the quick recovery that resulted.

Without a quick recovery, more insurance companies would have become insolvent, he said.

"We're finished with the intense period of dramatic correction," agreed William E. Thiele, executive vp of The Continental Insurance Co. in New York, in an interview. "The current environment is relatively normal."

To describe the change in the market, Mr. Thiele recalled there was a scramble until the last minute to fill out the liability insurance program for Liberty Weekend in New York for July 4th. "If that had been over Labor Day weekend, there would have been no question—they would have had the coverage," he said. "July 1 was the last really tight date."

"There is more choice for the buyer today than six to nine months ago," Mr. Thiele said.

Mr. Thiele acknowledged "we are beginning to hear war stories" from the field about a softening marketplace, which began to circulate in August. 'But," he added, "we've seen no erosion of our business."

He stressed: "This is not the beginning of a rate war."

Suggesting that current insurance prices and availability are "within the band of normalcy," Mr. Thiele said he could not predict how long the current market conditions will last. But, he predicted, "January will stay fairly tight."

And, he cited several factors that would delay a return to a wildly competitive market, including:

- Insurance company loss reserves may need further strengthening.
- More insurers may become insolvent, which would take its toll on the market through guaranty fund assessments and diminished availability of coverage.
- Problems collecting reinsurance recoverables will continue.
- Reinsurance capacity in the London market is diminished and European reinsurers continue to refuse to support U.S. casualty business.

Contrary to what several brokers said, Mr. Thiele also said, "I haven't heard anyone talking about market share."

Most reinsurance company executives attending The Greenbrier meeting also reaffirmed their position as stated just a month ago at their annual gathering in Monte Carlo: conditions will stay tight (*BI*, Sept. 22).

But, one reinsurance company executive said he was surprised recently: He lost an excess-of-loss casualty treaty to another reinsurer that charged a lower price.

While the industry leaders disagree on how much competition—if any—is returning to the marketplace, at least one sign that profits are up can't be disputed: Attendance at the meeting was 1,253—100 more than last year, and not a single registrant didn't show up

The general mood also was up. As one attendee said: "The insurance brokers here know they won't have such bad news to carry to their clients this year and the insurance company executives here are all happy to still have their jobs."

And, as Mr. Bailey observed in public remarks at the NACSE/NACSA joint meeting, "Let's face it—explaining improving results and better markets, even at higher prices, is a lot better than the alternative." ■

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Look at bigger issue in tort reform: Expert

WHITE SULPHUR SPRINGS, W.Va.—The tort reform debate should be transformed from a cyclical issue that arises only in tight insurance markets into a more fundamental discussion of the purpose of the civil justice system, says a communications strategist who has heard both sides of the issue.

Orin S. Kramer, executive director of Sawyer/Miller Group in New York, a communications strategy firm specializing in public affairs, was vice chairman and executive director of The Governor's Advisory Commission on Liability Insurance in New York.

Mr. Kramer

From that experience, Mr. Kramer advises that the tort reform debate should become a discussion focusing on a choice between a tort system that deters negligent conduct and a full compensation system for injured persons.

"If you want to deter negligent conduct through the tort system, then you should predicate recovery on the finding of negligence," Mr. Kramer advised.

"If society insists on compensating (injured persons) irrespective of negligence, then there are cheaper and faster and fairer ways to do it than through the tort system," he said.

"You can make a philosophical case for either approach," Mr. Kramer observed. "You can achieve deterrence through a fault-based tort system or broader compensation through a social safety net, or no-fault, and use government regulation and criminal law to achieve deterrence.

"But you can't achieve both objectives through the same tort system without putting intolerable strain on that system," Mr. Kramer said during a panel discussion on tort reform at the annual meeting of the National Assn. of Casualty & Surety Agents and the National Assn. of Casualty & Surety Executives at The Greenbrier (see story, facing page).

In addressing this discussion, questions have to be answered, such as:

- How much risk do we want to tolerate in society?
- To what extent is it desirable or feasible in a competitive world economy to seek a zero-risk environment?
- How much do we pay people with injuries
- Who pays?
- Who gets paid?
- What mechanism do we use to deliver those funds?

"There is no single right answer," Mr. Kramer said, warning that the questions won't be answered in 1987 or 1988.

But, he added, "If you don't try to get people to focus on these issues and make those choices—even if you are pushing for incremental reform—you will be left with what we have today: A system that is very expensive. . .a system that does not have much deterrence (and). . .a system that is eroding our international competitiveness."

In the current debate, Mr. Kramer said, he finds the arguments of the plaintiffs' bar against tort reforms to be weaker on the merits. "But, it's a political fact that when you discount for the merits, the industry critics have made their case more effectively than the industry."

He said the plaintiffs' bar is vulnerable to criticism on four points:

- The tendency to define the "consumer interest" purely in terms of the potential plaintiffs. "A consumer is a potential plaintiff but a consumer also is an insured, a self-insurer, a taxpayer and a user and purchaser of government services."

"This debate should not be perceived about taking something away from consumers," Mr. Kramer advised. "It is not about balancing interests of manufacturers and cities and insurers on one side against the interests of consumers on the other side. It's about balancing legitimate but competing consumer interests."

There is "no definitive answer as to how you weigh those interests."

- The tendency to gloss over the most serious indictment of the tort system—that it is arbitrary and unfair.

"I don't like the lottery metaphor either—it implies that the person who won the million-dollar settlement feels that by getting injured they won," he said, referring to remarks by other panelists.

However, Mr. Kramer said, "the lottery metaphor works in that similarly situated plaintiffs may recover a great deal or nothing depending upon the depth of a defendant's pockets, the limits of his coverage or the way a particular judge or particular jury values a particular injury."

- The tendency to ignore the "paradox. . .that the expansion of tort law, which has been facilitated by the existence of the insurance system, is now jeopardizing that system."

If the insurance mechanism is in trouble, it means "a plaintiff could end up with a worthless paper verdict if there is no insurance."

- The "bad economics" preached by those who contend that the industry's economic cycles dictate the price and availability of insurance while ignoring "that there is is inevitably some relationship between cost and price" of insurance and claims.

Even by pointing out these weaknesses in the anti-tort reform argument, the outlook for tort reform in 1987 is "less favorable than some people in this room might anticipate," Mr. Kramer warned.

"You are looking at a few incremental victories and whole lot of damage control," he predicted.

Progress on tort reform will be slow, Mr. Kramer said, because:

- There is no consensus on the problem.
- As insurance price increases taper down, policyholders will adjust and "the short-term window of opportunity begins to close." Legislators are tired of this issue, he said.
- The insurance industry has been unable to establish "a quantitative linkage between tort reform and insurance rating," and legislators in states considering tort reform will want to know what insurers have done in response to similar reforms enacted in other states.

If insurers only say that insurance is more available and prices are lower than they would have been without reform, that "won't be very effective," he warned.

- The insurance industry's profits are recovering.

The public will see higher profits and will not consider the industry's concern for return on equity.

Referring to "damage control," Mr. Kramer said the insurance industry appeared surprised by the rate regulation that accompanied tort reform in Florida. Instead, he said, insurers should be surprised there wasn't more legislation linking tort reform to tighter control of the industry. ■

Panelists debate need for tort reform

By KATHRYN J. McINTYRE

WHITE SULPHUR SPRINGS, W.Va.—The U.S. civil justice system must return to a fault-based system and adopt four reforms for U.S. corporations to continue to innovate and be competitive in the international marketplace, the chairman of Union Carbide Corp. contends.

In addition to basing liability on fault, the civil justice system should be reformed to repeal joint and several liability, limit awards for pain and suffering and punitive damages, incorporate a sensible collateral source rule and include a state-of-the-art defense, according to Warren M. Anderson, chairman of the board and chief executive officer of Union Carbide Corp. in Danbury, Conn.

Mr. Anderson

However, Marianna S. Smith, executive director of the Assn. of Trial Lawyers of America in Washington, D.C., charges that repealing joint and several liability and limiting awards for pain and suffering would infringe on individuals' rights.

Instead, she proposes that harsh penalties be levied against both defense and plaintiffs attorneys who file frivolous actions or cause frivolous delays of litigation, and that more alternative dispute resolution processes be used, particularly to resolve smaller claims for damages.

But, the vice chairman and executive director of the Governor's Advisory Commission on Liability Insurance in New York, Orin S. Kramer, suggested that both those supporting tort reform and those fighting reforms are failing to debate the fundamental questions that have to be answered (see story, page xx).

Mr. Anderson, Ms. Smith and Mr. Kramer presented their perspectives on the tort liability system at a joint meeting of the National Assn. of Casualty & Surety Agents and the National Assn. of Casualty & Surety Executives at The Greenbrier earlier this month.

"Corporations are so concerned about the liability issue because a growing number are self-insured," Mr. Anderson told the audience of insurance industry leaders.

"It's not by choice that corporations are turning to substantial self-insurance," he reminded the audience. "The typical industrial company would be very happy to leave the insurance business to the insurance industry. . .we are in it because traditional sources are either too expensive or have dried up."

Chemical companies, in particular, are having great difficulty finding and buying insurance, Mr. Anderson said. "Union Carbide's cost of insurance above the deductible has increased 16-fold in the last five years, and that's not because of Bhopal," he noted, referring to the tragic chemical accident in India in December 1985 that killed 2,000 and injured several hundred thousand others. Mr. Anderson said a "chemophobia" exists in this country that insurance underwriters can't put into perspective because they lack technical knowledge. He warned, however: "Once chemical companies adjust to being dropped, it may be too late for the insurance industry to come back in."

But, the insurance problems confronting chemical companies are really a problem in general for society, Mr. Anderson said. "Society in general has a problem, too, when its social and civic institutions and industrial companies and health care and other professionals cannot afford insurance or cannot obtain it at any price."

The development of new products and technology is threatened, people are reluctant to serve on non-profit, government and corporate boards, and useful medicines and vaccines have been pulled from the market because of fear of rising costs of defending lawsuits, he said. He cited two products that Union Carbide is not marketing because the threat of lawsuits appeared to make them potentially unprofitable.

Union Carbide's living home care business, which delivers oxygen to people at home, had helped fund the development of a suitcase kidney dialysis unit. This unit would have allowed people to receive this treatment at home instead of having to travel to a hospital or clinic.

"But we sold the development to a foreign company, mainly because we believed that the size of the damage claims and the probable cost of defending ourselves would make the whole project uneconomic."

"If the trend continues though our industry, it's not hard to imagine that our society will become less competitive, less innovative. . .more cautious in our commerce," leaving the United States less competitive worldwide, he said.

Mr. Anderson, an Aetna Life & Casualty board member, said he does not blame the insurance industry, adding his views are not influenced by his association with Aetna.

"I'm convinced the insurance industry is no less concerned about the problem than the rest of us—and may be more so. Insurance companies would rather write insurance than not write insurance. You don't grow and prosper by turning away business." And, he refuted the insurance industry's critics who "believe that insurance companies are a source of the problem."

The solutions of increased insurance industry oversight and mandated coverage "shift the focus away from the real problem: abuses of the civil justice system that have made some businesses and activities of our society virtually uninsurable."

"The system has become a sort of lottery (that) encourages anyone who has suffered an injury to think in terms of a lawsuit and in terms of getting rich."

Legal liability now can "reach back 20 to 30 years and look decades ahead," Mr. Anderson said. "You don't need to show the defendant was primarily at fault. . .even a plaintiff who is the primary cause of his own injury can collect damages." And now, he said, plaintiffs want compensation for "exposure to risk and fear of an accident."

Instead of today's liability system, Mr. Anderson advocated a liability system in which liability means: "Corporations should pay their share of whatever losses there were when they did something wrong and that wrongful act caused the loss. Doing something wrong should imply there was at least some negligence, failure to apply knowledge in existence at the time the product was made or failure to meet statutory requirements."

Explaining the need for the four specific reforms he suggested, Mr. Anderson said:

- Joint and several liability should be repealed because "there is no rational reason for a defendant with only marginal involvement in an accident to be stuck with the whole judgment." And, the tort system cannot serve as a deterrent when the burden of damages can fall on a defendant not primarily responsible.
- Awards for pain and suffering and non-economic and punitive damages should be limited because currently the range is so wide the system is unfair.
- A reasonable collateral source rule is needed that would permit damages to be reduced by amounts already recovered by the plaintiff because if a plaintiff already has recovered legitimate losses, why should the defendant have to pay again, Mr. Anderson asked.
- Manufacturers need a state-of-the-art defense because without this defense, manufacturers can be liable for risks they could not have known about or anticipated, he said.

Mr. Anderson lamented Congress' failure again to pass a federal product liability law and expressed hope the next Congress would do so.

But Ms. Smith, in her remarks, asked the audience to "recognize that you are a potential plaintiff and not just a potential defendant. "You think you are put upon the system," she commented. But, she added, "someone in this room will be a plaintiff very quickly. Someone will be hit by a drunk driver, a product will blow up in your face, you will be malpracticed upon in a hospital, by a lawyer or an accountant.

"It's your rights we're talking about—not just your money. If money were the only issue to talk about, I wouldn't be here and I would agree with you," she said. "There is very delicate and very precious public policy at issue," she said: "Individual rights."

Responding to several of Mr. Anderson's tort reform suggestions, Ms. Smith asked the audience to consider the other side of the issue.

"Caps on damages are a disgrace," she said. "I don't think you or anybody else can tell me what that cap ought to be," she said.

And, "punitive damages are the most talked about and probably the least collected in the world," Ms. Smith said.

More punitive damage awards are made in commercial litigation than in tort litigation, she contended. Regarding joint and several liability, Ms. Smith said, "I understand how you feel. I understand, but I disagree with you."

There aren't very many cases, she contends, in which a defendant that is 1% liable is ordered to pay the entire award. She admitted that joint and several liability can be harsh, but she added, "it's pretty hard on an innocent victim who can only collect 10% of their judgment and they are confined to a wheelchair somewhere."

Ms. Smith

Ms. Smith also refuted allegations there has been a litigation explosion but acknowledged how few studies have been done on the legal system. However, Ms. Smith cited two studies that conclude there is not a litigation explosion: One by Marc Galanter, law professor at the University of Wisconsin-Madison, which was published in the UCLA Law Review in October 1983; the other by the National Center for State Courts (*BI*, May 5).

Ms. Smith also refuted charges that the cost of awards is growing too high. About 400 tort cases per year result in jury awards exceeding $1 million. "That isn't very many when you stop to think about the type of damages," she said, citing quadriplegics, victims badly burned and scarred and people who have become sterile.

A person who suffers brain damage at age 20 can incur bills for care totaling $6 million over the rest of his/her life, she said. Ms. Smith also charged that characterizing the civil justice system as "a lottery" is "very crass."

"That lottery is being confined to bed the rest of your life, not being able to keep your job. . .not being able to love your family. I'm not being melodramatic. I'm describing clients of my own," she said.

In addition, Ms. Smith defended contingent fees, which allow plaintiff's attorneys to receive a share of a verdict ranging from one-third to one-half. The alternative to contingent fees would be for plaintiffs' attorneys to work on an hourly fee. While observing that the "fine threads in the room" suggested that the people in the audience could afford to pay a plaintiffs attorney an hourly fee, "most folks couldn't afford to pay a lawyer $250 an hour," Ms. Smith said. She acknowledged, however, "When contingent fees are abused and exploited and when lawyers take advantage of it and charge too much, it makes me just as mad as you. And that's when you ought to take them to the judge. Judges will adjust those fees."

Regarding the collateral source rule, Ms. Smith contended that medical policies require injured people who recover damages to pay back their medical insurers for medical bills paid, rendering the collateral source rule a non-issue.

However, insurance company underwriters later disputed her analysis of the policy, saying health care costs are not repaid from damage recoveries. One member of the audience publicly suggested plaintiffs attorneys do not want the collateral source rule changed because it would reduce their contingent fees.

Ms. Smith did offer the audience some suggestions on issues "where we can agree" to work for change in the civil justice system. She advocated "harsh discipline" for both defendants and plaintiffs attorneys that file frivolous lawsuits and engage in frivolous delays in trials.

She also suggested that alternative dispute mechanisms, such as minitrials, be used, especially for small claims that "lawyers won't take because lawyers can't afford to take them," citing a claim for $15,000 in damages that would cost $40,000 to take to court.

Ms. Smith advised the insurance company and agency/brokerage executives that if they want to change the tort system, "You are going to have to show some kind of real relationship between what you charge for premiums, and what you pay out for claims and tort reform. You either have not been able to do it or you won't do it." ■

Push carefully for tort reform, Bailey tells industry

WHITE SULPHUR SRINGS, W.Va.—The insurance industry must walk a fine line in advocating tort reform, suggests the president of a leading property/casualty insurance company.

"The public generally, and our adversaries in particular, expect us to respond to tort reform by improving market availability and pricing," said William O. Bailey, president of Aetna Life & Casualty Group in Hartford, Conn., the nation's largest publicly owned insurance and financial services corporation. Mr. Bailey also is the immediate past president of the National Assn. of Casualty & Surety Executives.

"We should not over-promise in our desire for reform, but we must not underdeliver either," Mr. Bailey said in his remarks to a joint meeting of NACSE and NACSA, the National Assn. of Casualty & Surety Agents, at The Greenbrier earlier this month.

"In a society that hates to face reality, the temptation to shoot the messenger is high," Mr. Bailey noted.

"Even so," he added, "we have little choice but to press for reform. Our business can't survive the extreme uncertainty prevalent in the legal environment today, nor can we hope to price our product at a reasonable level when our costs are out of control."

The drive for tort reform, however, "will not be successful without a long-term commitment from this industry," Mr. Bailey said.

"The cause needs all of us—company people and producers alike—to concern ourselves with the pursuit of legislative reform and greater public understanding of the need for change."

Wilson H. Taylor, president of the property/casualty group at CIGNA Corp. in Philadelphia, answering a question during a panel discussion, agreed that, "We as an industry have to pursue actively the changes we think are desirable for our customers."

But, he stressed: "The focus of tort reform is not insurance companies or agents. The focus is your customers. If you want to provide value to your customers, you should attempt to reduce their cost, their uncertainty, their problems of doing business."

Mr. Wilson cautioned his colleagues against allowing the debate over tort reform to center on insurance companies providing data to prove that tort reform is needed.

"We see currently and prospectively changes in the judicial system that require change and we can't prove with past data the state of the future," he advised.

While "no other industry provides as much data in as much detail," Mr. Taylor asserted, the difficulty in providing data to prove tort reform is needed is "the rate of change in the tort system, the court system and the justice system."

"To get 5-year-old data that displays this problem to prove tort reform is a contradiction in terms," he said. "Tort reform is not amenable to proof."

Therefore, he suggested that "to let that argument get focused on insurer data is a pure side issue," advising his colleagues to be "very firm" and "not to apologize for not having every conceivable piece of data an outsider could ask for."

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* Source Business/Occupational breakdown of qualified circulation, May 26, 1986 issue, as submitted to BPA for June 1986 BPA Publisher's Statement.

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M&M settlement

Continued from page 1
more difficult.

"The list is pages long," a source said of M&M's insurers. "It's a program in place for various layers with numerous insurers."

"Certain London and U.S. companies are involved and probably companies elsewhere as well," the source said.

The identities of the companies on the individual layers could not be learned.

M&M's insurance program in London was brokered by Willis Faber P.L.C.

London insurance sources say that in the early 1980s, most major brokers would have had more than $60 million in coverage.

The settlement with M&M will become part of a proposed reorganization plan for Manville, which filed for reorganization in August 1982 because of overwhelming asbestos claims.

The plan, which creates a more than $2.5 billion trust fund to pay asbestos victims, is pending approval in U.S. Bankruptcy Court in New York.

Under terms of the settlement, which was signed on Oct. 10, M&M will pay $29.75 million, plus interest calculated from Jan. 1, 1987. The interest rate will be determined by a complex formula that is tied to the rates for government securities and other investment indices.

Payment is due on whichever date is later: Four years after consummation of Manville's Chapter 11 reorganization plan, after which no further appeals are available, or the date when $630 million has been paid in asbestos-health claims and expenses under the plan.

Manville has always contended that it has more than $600 million in liability insurance.

Payment of the settlement amount is secured by a letter of credit until Manville's plan is confirmed by a final order, and thereafter a fully funded trust, Manville said.

"We are convinced that the services we performed for Johns-Manville, which were rendered about 40 years ago, were consistent with prevailing industry practices," M&M said in a statement.

"However, our insurance carriers felt that protracted, costly litigation would not be in anyone's interests, and that a settlement of this litigation would be in the best interests of all concerned," the statement said.

"The settlement will not have any adverse financial impact on Marsh & McLennan," the statement added.

A Manville attorney said the company was pleased with the settlement.

"I think given the complexity of the issues, we are very pleased to have achieved a settlement of a broker malpractice claim for this much money," said Curtis A. Caton, Manville's attorney with the San Francisco firm of Heller, Ehrman, White & McAuliffe.

"We are very happy with it," he said.

In its suit against M&M, Manville, formerly the world's largest asbestos producer, charged that the broker and a Canadian subsidiary, M&M Ltd., failed to put together an insurance package that would fully cover asbestos claims (*BI*, Jan. 18, 1982; Feb. 15, 1982.)

M&M had been Manville's broker from 1944 through February 1982.

Alleging reckless and malicious conduct on M&M's part, the suit sought $700 million in exemplary damages along with indemnification and unspecified compensatory damages for liability claims.

However, Manville ultimately also sought $700 million in actual damages as well.

Among Manville's allegations were that:

- M&M breached its fiduciary obligation to cooperate and assist Johns-Manville in connection with facts and circumstances surrounding the acquisition and administration of insurance.
- M&M negligently failed to carry out its obligation to obtain full coverage for all legal liability of Johns-Manville in connection with pending or future actions against it.
- M&M failed to carry out oral or implied agreement to render complete brokerage and insurance-related services.
- M&M made intentional misrepresentations to Johns-Manville leading it to believe it had the required insurance coverage and that as a result it continued to employ the defendants as their insurance broker.

The suit said each year since 1944, M&M obtained comprehensive general liability and workers compensation insurance and coordinated the acquisition and administration of the insurance into an overall package for Johns-Manville.

"To the extent J-M does not have an insurance package with full coverage for J-M, for all legal liability in the underlying actions. . .the resulting uninsured liability and costs of defense would be the primary fault and responsibility of M&M," the suit said.

M&M denied all the allegations. In its answers, it blamed Johns-Manville for coverage gaps, and contended M&M had relied on information provided by Johns-Manville, which failed to disclose facts that materially affected the coverage.

It also charged that Manville did not act in good faith in seeking cooperation, disclosure and assistance from M&M.

Manville's suit against M&M in state Superior Court in San Francisco was combined in 1983 with massive coordinated insurance coverage litigation involving Manville and four other asbestos producers and their insurers over coverage for asbestos claims.

The trial of Manville's dispute with M&M was to take place after the trial between other producers and insurers, which began March 4, 1985, was completed.

Only seven insurers, out of an original 27, remain in that litigation with Manville following the $45 million settlement between Manville and five insurers in the coordinated litigation. One settlement is with four American International Group Inc. units—AIU Insurance Co., Granite State Insurance Co., Lexington Insurance Co. and National Union Fire Insurance Co. of Pittsburgh, Pa. The other is with Rocky Mountain Insurance Ltd.

Under the settlement, AIU will pay $18.8 million, Granite State $942,360, Lexington $11 million and National Union $13.8 million.

AIU wrote insurance for Manville from July 1, 1978, until July 1, 1980, Granite State and National Union from July 1, 1976, until July 1, 1980, and Lexington from July 1, 1975, until July 1, 1980.

The four insurers will pay the amounts on Aug. 15, 1989 or one month following consummation the reorganization plan, whichever is later. Payment of the settlement is secured by a bond.

Rocky Mountain wrote excess coverage from July 1, 1977, to July 1, 1978. Unlike the settlements with the four other insurers, in which they will pay a lump sum to Manville, Rocky Mountain will fund asbestos-related claims as they are presented up to a total of $1 million.

The settlement with Rocky Mountain follows one last November in which the insurer agreed to pay Manville $14.27 million in three installments based on other policies written between July 1, 1977, to July 1, 1979 (*BI*, Dec. 2, 1985).

According to Manville, Rocky Mountain's obligations to pay claims under the latest settlement is subject to exhaustion of other funds, including: a 1984 settlement for $314.4 million with Travelers Indemnity Co., The Home Insurance Co., a group of syndicates at Lloyd's of London and British companies; the exhaustion of coverage under Rocky Mountain primary policy; and funds received from any other pre-1976 primary policies.

Manville attorney Mr. Caton declined to say whether the settlements were for the limits of the policies, noting that Manville and the settling insurers might differ on that assessment.

An attorney for AIG companies said the negotiations with Manville intensified over the past four months.

"It was worked out through long and fair negotiations and we reached a reasonable compromise," the attorney said.

Mr. Caton said the company is trying to settle its litigation with the remaining insurers in the California litigation.

"We are working on other settlements," he said. "We are trying to talk with everybody who is left."

The $29.75 million settlement with M&M and the more than $45 million settlement reached with insurers brings Manville closer to the $600 million in insurance proceeds its expects to recover to pay asbestos claims under the company's proposed reorganization plan. Manville has recovered more than $500 million to date.

Like the M&M settlement, the settlements with Manville's insurers are conditional upon entry of a final order approving a reorganization plan for Manville and approval of the settlement by "appropriate judicial authorities."

Also in both settlements, the parties will immediately dismiss claims and defenses pending in the San Francisco litigation, pending approval of the settlements by the U.S. Bankruptcy Court in New York. ■

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New Lloyd's bylaw

Continued from page 2
tions," Lloyd's announced.

The department also will assist Mr. Lord in carrying out spot checks.

The scope and operation of Lloyd's review department will be similar to the monitoring department of the London Stock Exchange and other self-regulatory organizations that will monitor activities under Britain's new financial services bill.

Lloyd's—so far—will not be regulated under the financial services bill, which is expected to become law soon.

However, a British government committee headed by Patrick Neill is reviewing Lloyd's self-regulation to determine whether self-regulation provides as much protection to investors as the financial services bill would.

The Neill report is expected to be published later this year.

However, Mr. Lord said that his new powers and the new department were not established in anticipation of the Neill report or to convince the British government that Lloyd's can regulate itself.

In the meantime, PCW members continue to negotiate with Lloyd's and 37 other parties.

PCW members currently are responsible for paying a net loss of 235 million pounds ($337.2 million), Mr. Lord said.

The gross losses for P.C.W. members are expected to reach 380 million pounds, before reinsurance recoveries, according to sources in Lloyd's.

Lloyd's has set aside more than 90% of its Central Fund to pay for these losses until a settlement can be reached between PCW members and the defendants named in a drafted lawsuit that the members have threatened to file.

Mr. Lord expects a settlement will be reached before the end of the year.

Until there is a settlement, Lloyd's says its subscription and Central Fund contributions will remain unchanged.

'If we had reviewed the affairs of brokers and underwriters, we might have seen something that would have prevented' the PCW syndicates' problems, Mr. Lord says.

The fund in September was valued at 265 million pounds, including the amount earmarked for PCW losses.

Lloyd's estimates that 1986 contributions will increase the fund to 300 million pounds.

On another matter, Lloyd's has expelled former Lloyd's underwriter Colin Hart and fined him 175,000 pounds ($253,750) for alleged offenses he committed when he was the underwriter for syndicates managed by L.E. Hart Associates Ltd., a subsidiary since 1976 of Alexander Howden Group Ltd.

Mr. Hart also is not allowed to transact or be concerned or interested in any insurance transactions at Lloyd's, the disciplinary committee ruled.

Mr. Hart, who left Lloyd's as underwriter in 1986, was found guilty of eight out of 24 charges brought against him by Lloyd's.

The charges against Mr. Hart include failure to return escrow funds to syndicates under his control resulting in the loss to the syndicates of about $1 million, alleged misappropriation of syndicates funds between 1974 and 1977 and allegedly writing three sham stop-loss policies.

Lloyd's disciplinary report on Mr. Hart has been sent to the Director of Public Prosecutions, according to Mr. Lord.

Risk Retention Act expansion

Continued from page 1

William Mortimer, president of Risk Management Consultants Inc. in Laguna Beach, Calif.

"Passage of the Risk Retention Act is a great day for buyers," said Jon Harkavy, director of governmental affairs for the Risk & Insurance Management Society in New York, a prime backer of the legislation.

"This is an important start in the expansion of alternative risk financing vehicles," Mr. Harkavy added.

Passage of the legislation, for which groups such as RIMS, the American College of Nurse Midwives and the National Assn. of Insurance Brokers all lobbied over the last eight months, already is generating enthusiasm and action.

For example:

- Members of two Chicago-based trade associations—the National Marine Manufacturers Assn. and the Assn. of Home Appliance Manufacturers—have filed applications with the Vermont Department of Banking and Insurance to set up risk retention groups under that state's captive insurance company statute, according to their adviser.

Group members previously were interested in establishing risk retention groups to cover product liability risks (*BI*, April 14) but now want to expand to cover comprehensive general liability as the legislation allows.

"The timing of the legislation's passage was very good," said Richard Duer, managing director at Kirke-Van Orsdel Management Corp., the Des Moines, Iowa-based captive manager and administrator that is advising members of the two associations.

- The American College of Nurse Midwives, a Washington-based trade group, is reviewing whether to set up a risk retention group for professional liability coverage.

If established, this risk retention group, which would be a mutual, would share in offering coverage along with a consortium of 10 insurers that now provides licensed nurse-midwives with up to $1 million of professional liability coverage (*BI*, July 28).

"This could be a very big undertaking," said Karen Ehrnman, government relations coordinator for the nurse-midwives association.

- Tom Duck, a Tucson, Ariz.-based broker, is interested is setting up a risk retention group—chartered in a Western state—to provide liability coverage for several hundred small auto rental companies.

"This would give us the opportunity to serve our clients nationwide. This is something that should have been done a long time ago," Mr. Duck said.

- HOW Insurance Co., the first major risk retention group, established in Delaware under the 1981 act, is considering expanding beyond the product liability coverage it now offers 12,000 homebuilders.

"The expansion of the Risk Retention Act gives us options for new products to benefit our members that we didn't have before the amendments. HOW is reviewing these options," noted Beth Kravetz, government relations counsel in HOW's Washington office.

- The Wyatt Co. has been asked to conduct risk retention group feasibility studies by several unidentified national trade associations that are having difficulty obtaining professional liability coverages in the commercial market.

- An official of the American Trucking Assns., an Alexandria, Va., trade association, predicts that a "spate" of its members will establish risk retention groups to cover liability exposures.

"Risk retention groups will be a real option for the trucking industry. For the first time, we have an option to traditional insurance," said Lana Batts, vp-policy at ATA.

The widespread interest and enthusiasm in the 1986 legislation is in sharp contrast to the indifference and silence following the passage of the 1981 measure.

"Members kept asking, 'When is it (passage of the legislation) going to happen?' " said Ms. Batts.

"I've received 50 calls in one week from a wide range of groups asking for information about the act," reported H. Felix Kloman, principal with the Tillinghast division of Towers, Perrin, Forster & Crosby in Darien, Conn.

And consultants and others already are gearing up to explain the potential uses of the newly expanded Risk Retention Act to employers and trade associations.

For example, starting next month, Tillinghast/TPF&C plans to sponsor about 15 briefings around the country to explain the act, and RIMS has tentatively scheduled a Washington briefing in early December.

In addition, the ATA, the nation's largest trucking association with about 3,500 members, is holding a special session on the Risk Retention Act as part of its annual meeting this week in Washington.

"I expect it will be a very well-attended session," Ms. Batts said.

Interest in the Risk Retention Act also is high because of a provision wiping out a tax advantage for group-owned offshore captive insurance companies contained in the recently passed Tax Reform Act of 1986. The tax bill has not yet been signed by the president.

That provision will make shareholders of many offshore group captives liable for current-year taxes on the captive's income from insuring U.S. risks (*BI*, Aug. 25, Sept. 15).

Currently, shareholders that each own less than 10% of an offshore group captive's stock can defer taxes on the captive's income until it was actually paid to the shareholders.

With the removal of this tax-deferral advantage and the expansion of the Risk Retention Act, it becomes worthwhile to set up a risk retention group in the United States rather than operating offshore, Mr. Kloman explained.

"It is highly probable that many offshore group-owned captives" will return to the United States as risk retention groups, Mr. Kloman predicted.

"For those (captives) that write primary coverage and want to eliminate fronting costs or can't maintain fronting arrangements. . .they might come ashore" as risk retention groups, said Anthony Demas, a managing director at Marsh & McLennan Inc. in New York.

"The combination of the tax law change and the Risk Retention Act will demonstrably increase the number of U.S.-domiciled captives," Wyatt's Mr. Boggs predicted.

But other experts say it is too soon to say if a significant number of offshore group-owned captives will relocate in the United States as risk retention groups.

Offshore domiciles still offer significant attractions, including a very well-developed infrastructure of captive support services, while the most popular domestic captive domicile—Vermont—still is building its services, pointed out Harry Shuford, vp with Alexander & Alexander Services Inc. in New York.

Passage of the expanded Risk Retention Act comes at a time when coverage for many lines of commercial insurance, especially professional liability, remains expensive and hard to come by.

The huge premium increases and unavailability of coverage have angered buyers, who believe they are the unfair victims of poor pricing decisions by the insurance industry.

This anger increases the likelihood employers will band together to form risk retention groups and cover more of their own exposures, experts say.

"The insureds are fed up with the insurance industry. There is a feeling you can't depend on these people (insurers) for stable coverage," pointed out Mr. Mortimer, the California risk management consultant.

"Due to a lack of credibility of the market, employers are more willing to retain exposures and pool their own losses," Mr. Boggs said.

The tight market also has made it difficult and costly for captives to find commercial insurers to front their programs, noted Lincoln Miller, chief executive officer of Vermont Insurance Management Inc., a Montpelier, Vt., captive manager.

The Risk Retention Act, though, eliminates the need for a front, since a risk retention group would have to be licensed in only one state before it could operate nationwide.

But one cloud hanging over risk retention groups is the reaction of state insurance regulators.

Following the passage of the 1981 Risk Retention Act, insurance commissioners made no secret of their dislike of the law.

For example, David Elliott, as former Delaware insurance commissioner, refused to recognize HOW Insurance Co. as a risk retention group. That forced HOW to go to federal court to force Mr. Elliott to recognize HOW as a bona fide risk retention group.

The National Assn. of Insurance Brokers already is concerned that commissioners might harass risk retention groups.

NAIB President Raymond L. Hayes said that while the NAIB wants commissioners to monitor the activities of risk retention groups, "we also recognize that some insurance commissioners are wary of the risk retention mechanism. We sincerely hope that this wariness will not lead to undue harassment of financially sound and well-managed groups."

Concern about regulatory interference may be unfounded.

Unlike the 1981 legislation, the expanded 1986 legislation contains provisions to give commissioners more control over risk retention groups, which was obtained by The National Assn. of Insurance Commissioners, through its Washington counsel.

As a result, while the NAIC had virtually no input in the 1981 legislation—a factor in its opposition to risk retention groups—many of the regulators' concerns have been met this time around.

"The NAIC is more resigned to accept the legislation. I'm confident there will be less hostility," said Michael Mullen, an attorney with the Washington law firm of Crowell & Moring, who represented a coalition of business groups in negotiations with the NAIC.

"The 1986 Risk Retention Act amendments made a great deal of progress in enhancing regulatory authority over the groups," said Robert H. Myers Jr., the NAIC's Washington counsel, who also is a partner with Heron, Burchette, Ruckert & Rothwell.

"The NAIC approached this legislation with apprehension, but we made a good-faith effort to help Congress formulate appropriate controls over the groups," Mr. Myers said.

Indeed, risk retention groups will be required to:

- Submit an operating plan to every commissioner in states where it intends to do business before beginning operation. This operating plan would include a rating schedule, coverages to be offered and limits.

- Submit to regulators in every state it operates a copy of the annual financial statement it files in its domicile. This statement would have to be certified by an independent accountant with an opinion on its reserves by a qualified actuary.

In addition, federal courts would have the clear authority to issue an injunction to stop a risk retention group from operating in all states if the court finds that a group is operating in a hazardous financial condition. ■

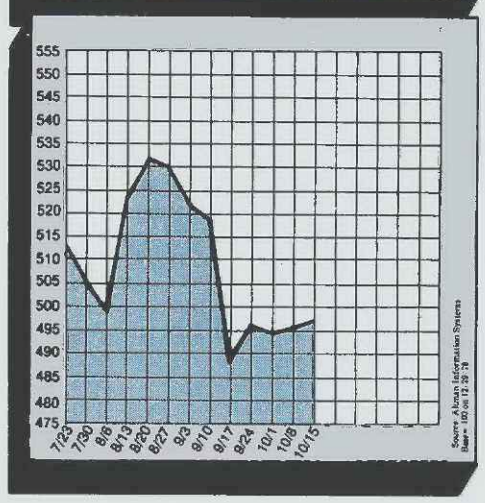
BI Industry Stock Report

October 15, 1986 — 10/9/86 thru 10/15/86

		Price	% Chg.	P/E	$ Div.	% Yld.	High	Low	Vol.(000)
Brokers									
Alexander & Alexander Svcs	NYSE	36.38	-1.7	242.5	1.00	2.7	36.63	35.88	345.2
Baldwin & Lyons Inc	OTC	24.00	-17.2	30.8	0.16	0.7	26.00	24.00	4.2
Corroon & Black Corp	NYSE	36.63	1.0	18.4	0.65	1.8	36.88	36.50	161.4
Crump E H Cos Inc	OTC	32.75	0.0	31.5	0.25	0.8	32.75	32.63	46.9
Gallagher Arthur J & Co	OTC	30.25	1.7	24.4	0.20	0.7	30.25	30.00	124.0
Hall Frank B & Co Inc	NYSE	19.75	-0.6	0.0	0.00	0.0	19.88	19.50	98.6
Marsh & Mclennan Cos Inc	NYSE	67.25	0.9	23.7	1.90	2.8	67.25	66.50	396.4
Poe & Assoc Inc	OTC	13.00	-1.9	16.5	0.32	2.5	13.25	13.00	39.3
AGENTS/BROKERS	AVERAGE			-77.2		1.7			
Conglomerates & Holding Cos.									
American Express(Fireman's Fd)	NYSE	59.63	3.2	11.3	1.36	2.3	59.63	56.88	2,346.6
Anderson Clayton(Ranger/PanAm)	NYSE	65.63	0.0	47.9	0.00	0.0	65.63	65.63	24.5
Armco Inc	NYSE	6.88	-1.8	0.0	0.00	0.0	7.13	6.88	1,050.7
Berkley W R Corp	OTC	29.25	-2.5	22.2	0.24	0.8	31.00	29.25	211.3
Berkshire Hathaway Inc Del	OTC	2705.00	1.3	658.2	0.00	0.0	2705.00	2650.00	0.6
CIGNA Corp	NYSE	55.88	-2.0	0.0	2.60	4.7	56.00	55.13	1,018.8
CNA Finl Corp (CNA)	NYSE	56.50	4.6	15.7	0.00	0.0	56.50	54.13	125.8
General Re Corp	NYSE	59.63	3.2	25.9	0.88	1.5	59.63	58.50	752.0
ITT (Hartford Group)	NYSE	52.13	-0.2	24.7	1.00	1.9	52.13	51.50	1,738.8
Sears Roebuck & Co. (Allstate)	NYSE	43.25	2.7	12.4	1.76	4.1	43.25	41.38	2,547.9
Teledyne Inc (Argonaut)	NYSE	311.50	-0.7	11.4	0.00	0.0	318.00	309.25	102.8
Transamerica Corp (Occidental)	NYSE	35.25	4.4	15.5	1.76	5.0	35.25	34.38	472.1
CONGLOMERATES/HOLDING COS.	AVERAGE			94.2		0.3			
Insurers									
Aetna Life & Cas Co	NYSE	57.38	1.1	11.5	2.64	4.6	57.38	56.38	1,132.5
American General Corp	NYSE	39.00	-1.0	11.6	1.12	2.9	39.63	38.63	781.7
Amern Heritage Life Invt Co	NYSE	39.25	-0.6	14.2	1.32	3.4	39.75	39.25	0.7
American Indty Finl Corp	OTC	17.75	-0.7	0.0	1.12	6.3	18.00	17.63	4.2
American Intl Group Inc	NYSE	126.38	1.2	20.6	0.50	0.4	126.38	123.50	434.5
Aneco Reins Ltd	OTC	2.00	-5.9	0.0	0.00	0.0	2.13	2.00	2.0
Aveneo Corp	NYSE	25.25	-0.5	13.3	0.50	2.0	26.25	25.25	10.3
Business Mens Assurn Co Amer	OTC	27.50	0.9	22.5	1.10	4.0	27.50	27.00	82.2
Chubb Corp	NYSE	68.00	0.6	50.7	1.56	2.3	68.00	66.50	303.5
Combined Intl Corp	NYSE	57.50	-0.9	11.1	2.24	3.9	58.00	57.50	175.4
Continental Corp	NYSE	46.25	5.1	0.0	2.60	5.6	46.25	43.88	367.2
Crown Life Ins Co	OTC	350.00	0.0	12.1	6.40	1.8	0.00	0.00	0.0
Durham Corp	OTC	43.50	1.8	12.2	1.36	3.1	43.50	42.75	27.8
Farmers Group Inc	OTC	42.00	-1.2	14.6	1.00	2.4	42.75	42.00	227.4
Fairmont Finl Inc	AMEX	17.00	-1.4	17.5	0.00	0.0	17.00	16.88	20.8
Fireman Fd Corp	NYSE	38.00	4.8	0.0	0.30	0.8	38.25	37.63	435.5
Fremont Gen Corp	OTC	19.50	-3.1	0.0	0.48	2.5	19.63	18.75	131.6
Great West Life Assurn Co	OTC	730.00	-3.9	0.0	18.00	2.5	760.00	730.00	0.1
Home Group Inc	AMEX	19.38	0.6	92.3	0.00	0.0	19.75	19.13	421.3
Hanover Ins Co	OTC	64.75	2.0	18.7	0.56	0.9	64.75	63.50	44.7
Hartford Steam Boiler Insptn	OTC	40.75	-3.0	11.4	1.20	2.9	42.00	40.75	30.4
Kans City Life Ins	OTC	28.75	3.6	11.3	0.87	3.0	28.75	27.75	8.0
Kemper Corp	OTC	28.25	3.7	12.8	0.60	2.1	28.25	27.00	1,203.4
Liberty Corp S C	NYSE	41.00	13.1	15.1	0.72	1.8	41.00	36.00	39.0
Lincoln Natl Corp Ind	NYSE	53.75	4.1	11.7	2.00	3.7	53.75	51.88	297.8
Mission Ins Group Inc	PAC	2.13	0.0	0.0	0.00	0.0	4.38	1.75	52.0
Monumental Corp	OTC	55.63	0.0	18.8	0.00	0.0	55.63	55.63	1.1
Nac Re Corp	OTC	29.38	-1.3	0.0	0.00	0.0	30.50	29.25*	73.6
Nobel Ins Ltd	OTC	15.50	-0.8	14.9	0.37	2.4	16.00	15.50	55.0
Northwestern Natl Life Ins	OTC	28.38	1.3	10.5	0.86	3.0	28.38	27.75	71.3
Ohio Cas Corp	OTC	82.50	1.5	17.6	3.00	3.6	82.50	81.25	97.2
Old Rep Intl Corp	OTC	34.00	-1.4	11.3	0.78	2.3	34.75	33.88	151.1
Orion Cap Corp	NYSE	30.75	-0.8	0.0	0.76	2.5	30.75	30.50	12.5
Protective Corp	OTC	21.50	-3.4	11.6	0.70	3.3	22.50	21.50	77.2
Provident Life & Acc Ins Co	OTC	25.25	4.1	9.3	0.84	3.3	25.25	24.25	277.3
St Paul Cos Inc	OTC	40.25	1.9	24.0	1.50	3.7	40.25	39.50	810.0
SAFECO Corp	OTC	58.00	1.3	13.8	1.68	2.9	58.00	57.00	173.3
Seibels Bruce Group Inc	OTC	15.25	1.7	0.0	0.80	5.2	15.75	14.75	128.6
Selective Ins Group Inc	OTC	21.75	2.4	0.0	0.92	4.2	21.75	20.50	83.3
Statesman Group Inc	OTC	5.13	0.0	56.9	0.05	1.0	5.25	5.13	8.7
Tokio Marine & Fire Ins Co	OTC	493.00	-12.7	55.5	1.66	0.3	558.50	493.00	7.5
Torchmark Corp	NYSE	28.00	-0.4	11.3	0.60	2.1	28.00	27.38	358.2
Travelers Corp	NYSE	45.25	1.4	11.3	2.16	4.8	45.25	44.25	1,357.1
Trenwick Group Inc	OTC	18.25	1.4	0.0	0.00	0.0	18.50	18.00	56.4
United Fire & Cas Co	OTC	29.75	-3.3	15.6	0.80	2.7	30.75	29.00	11.6
United States Fid & Gty Co	NYSE	39.25	3.3	0.0	2.32	5.9	39.25	37.88	678.6
Uslife Corp	NYSE	46.00	1.1	12.0	1.12	2.4	46.00	45.00	81.8
Washington Natl Corp	NYSE	32.25	1.2	14.5	1.08	3.3	32.25	31.50	30.6
Zenith Natl Ins Corp	OTC	24.00	2.1	41.4	0.80	3.3	24.50	23.75	354.0
INSURANCE COMPANIES	AVERAGE			31.1		2.2			

System design: Altman Information Systems

BI Insurance Index



The *Business Insurance* index closed at 497 points on Oct. 15, up 18 points from the previous week's 495.2 points. A total of 30 stocks posted gains, 24 declined and seven remained unchanged during the trading period. The leading gainers were: Liberty Corp. S.C., up 13.1%; Continental Corp., up 5.1%; Fireman's Fund Corp., up 4.8%; CNA Financial Corp., up 4.6%; and Provident Life & Accident Insurance Co., up 4.1%. Stocks that posted the biggest losses were: Tokio Marine & Fire Insurance Ltd., down 12.7%; Aneco Reinsurance Ltd., down 5.9%; Great West Life Assurance Co., down 3.9%; Protective Life Corp., down 3.4%; and United Fire & Casualty Co., down 3.3%. The *BI* index's 0.4% average climb trailed that of the major stock market indicators.

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