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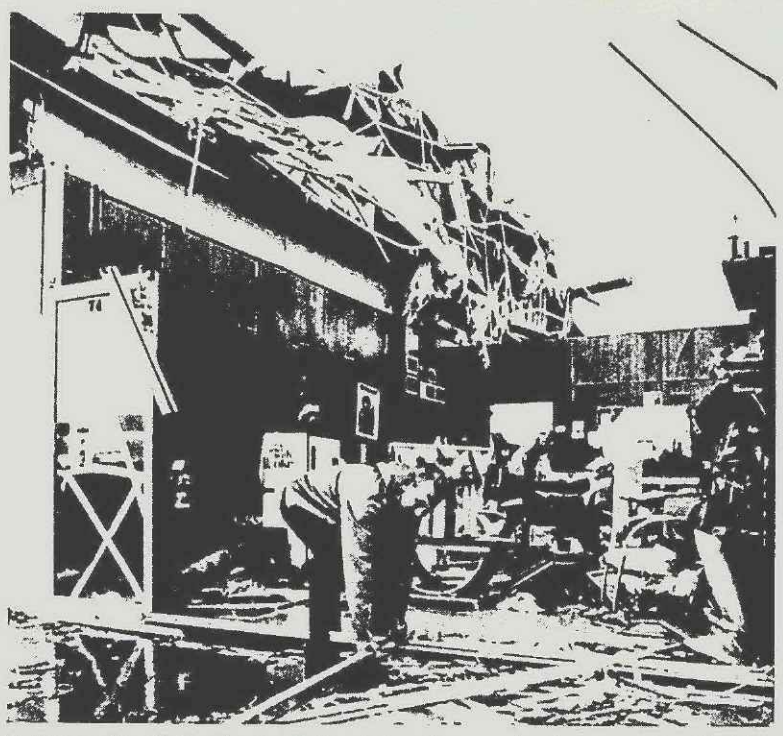

In the wake of Hurricane Eloise, insured property damages for Florida, Alabama and Georgia approach $50 million. In New York, New Jersey and Pennsylvania, hit with extensive flooding as a result of the hurricane, officials did not complete damage estmates. The storm, which produced 15 foot waves and 130 mph winds, resulted in $38,350,000 insured damage in the Florida Panhandle, according to the American Insurance Assn. A flood disaster was declared in five New York counties and in central Pennsylvania 20,000 persons were driven from their homes when the Susquehanna and Juniata Rivers overflooded.

Courts might not allow D&O to pay directors

NEW YORK—Corporate directors and officers should not rely on directors' and officers' liability insurance to protect them from adverse judgments, said Harvey J. Goldschmid, professor of law at Columbia University.

It is questionable whether the liability insurance would be held valid, particularly in extreme cases, by federal courts, because the courts may interpret D&O insurance as contrary to public policy, Mr. Goldschmid cautioned.

He put insurance and corporate indemnification clauses in an analogous category, explaining that allowing directors or officers to be indemnified under these plans might be judged by the courts as counterproductive, allowing directors and officers to sidestep consequences of wrongdoing.

"This isn't to say that the courts will necessarily disallow (the insurance coverage), but if I were a judge and saw that the board members had done something outrageous, I would not let them off the hook," said Mr. Goldschmid.

Many corporate directors, warned Mr. Goldschmid, have been and still are "operating in ignorance," thinking they are fully covered for any and all acts —and the liability that could be imposed—by D&O liability insurance or indemnification clauses. But the policies are written with so many exclusions that there are questions about the presence of any coverage, Mr. Goldschmid acknowledged.

For this reason, he believes the details of director insurance and indemnification should be carefully spelled out in layman's language by the insurer or the corporate risk manager so directors completely understand the extent of any protection.

If the insurance or indemnification provisions are questioned by the courts, insurance has a better chance of surviving than the indemnification clauses "because of the presence of an outside risk-taker," Mr. Goldschmid believes.

Fairchild Camera cuts costs by enticing broker in-house

By ELISABETH M. WECHSLER

MOUNTAIN VIEW, CA.—Fairchild Camera & Instrument Corp. has a new risk manager and its name is Marsh & McLennan Inc.

In an admittedly unusual arrangement, the San Francisco office of the nation's largest insurance broker filled two vacant risk management jobs for the suburban manufacturer of semiconductors and other specialized equipment with its own employes. Fairchild, with $385 million in 1974 sales, gave its consent, of course.

Risk manager Dennis Townsend, and assistant risk manager Linda Guffanti are housed at Fairchild's headquarters here but are paid by Marsh & McLennan to provide insurance coverage involving some $3 million in property/casualty premiums and $5 million in employe benefit premiums.

Fairchild's vp treasurer, Frank Schmieder, and other risk managers contacted by *Business Insurance* commented that the arrangement is unusual.

"More companies don't do it because they don't know if they're getting a good job done and they don't know if the coverage purchased carries the best price and broadest possible coverage," said a West Coast broker who is a former risk manager himself and now works for another national brokerage firm.

"I don't see having a broker on the premises as a growing trend because the risk manager field has grown up to be recognized by middle financial management as a valuable tool," he continued. He admitted, however, that the opportunity to have a direct say in allocating the large corporate premium pie is attractive to the broker.

One Midwest risk manager said a company "would have to be facing a brick wall and a firing squad before it got rid of its risk manager." He criticized Fairchild's decision, if based solely on financial considerations, as "short term" and "just another example of its bad judgment." He predicted that the company's losses and premiums would "rise to even higher levels" as the result of bringing a broker in-house.

But Marsh & McLennan disagrees with detractors of its Fairchild plan.

"I can think of a dozen instances where we are considered to be the risk manager for a company," said Tom Grogan, senior vp, based in Marsh & McLennan's San Francisco office and supervisor of the Fairchild account. "Not all major accounts have risk managers in-house. . .and where there isn't (one), the corporation relies more on the broker. We're used in many different capacities," he continued, though he admitted it is rare for brokerage personnel to work on the premises of a major national account on a long term basis.

According to Mr. Schmieder, Fairchild decided that bringing a broker in-house would give the company access to services and expertise "which we don't feel any one person can provide" as well as certain "economies" by saving risk management department overhead.

"In our kind of company you don't need a full-time risk manager unless you're self-insured," Mr. Schmieder said.

Ralph F. Perry, Fairchild's previous risk manager, left in February to join Amfac Inc. in San Francisco. It was at that time that Fairchild decided to look at alternatives other than hiring a replacement for him, Mr. Schmieder explained. Philip Haas, an assistant treasurer, performed the risk management duties temporarily (*Business Insurance*, April 21.) Ms. Guffanti formerly was Mr. Perry's secretary before being hired by Marsh & McLennan. Mr. Townsend joined the broker after being a risk manager for Cyprus Mines Corp.

Three other brokerage firms along with Marsh & McLennan were asked to bid on the project —Johnson & Higgins, Underwriters Services Inc. (both formerly the brokers of record) and Fred S. James.

Fairchild looks at the arrangement as a "way to bide time" and regards its commitment to Marsh & McLennan as a minimum 12-month trial.

"It's working well for property coverage," Mr. Schmieder said, obviously pleased with Fairchild's decision. He pointed out that benefit administration had been moved to the personnel department "because it's better for the company's employe relations."

Marsh & McLennan's remuneration is based on commissions only, it was learned, although a supplementary fee might be payable after the first year if expenses turn out to be higher than anticipated, Mr. Schmieder said.

Fairchild reportedly agreed to pay Marsh & McLennan commissions of between $100,000 and $200,000 for its property/casualty and benefit coverage.

Risk management department expenses at Fairchild before the recent arrangement were estimated at between $50,000 and $60,000 a year, Mr. Schmieder said.

Ms. Guffanti works full time at Fairchild while Mr. Townsend's participation is expected to taper off to two or three days a week once the program "is up and running."

When queried as to how large an account would have to be to

Continued on page 2

Train trip is cancelled; filmmaker says there'll be hell to pay

Insurance snafu foils Truman train promotion

By RICHARD L. GORDON

WASHINGTON—There may be some hell raised here because the "Give 'Em Hell, Harry" train didn't roll on schedule last month.

The reason: A snarl over who would pay for insurance.

Even Rep. William J. Randall (D-Mo.), who represents former President Harry S. Truman's home town of Independence, Mo., has pledged to get to the bottom of things.

Theater Television Corp. Los Angeles, had arranged through Amtrak, the national rail passenger service corporation, for a special six-day whistle stop train tour to promote its new flim, "Give 'Em Hell, Harry."

The company charged that 48 hours before departure time, they were informed that they would need to pick up a $5 million first dollar liability policy to cover any inquiries occurring among persons viewing the train.

That cost came on top of the $103,000 charge for rental of a diesel engine, passenger cars, and rail rights.

"When you are making a film, you are on a tight and closely scrutinized budget," a Theater Television official told *Business Insurance*. The additional cost was too much: the train trip was cancelled. The $103,000 was refunded.

What has the film producers boiling is that they believed all the insurance arrangements had been made through Amtrak as part of the original contract.

"There's going to be a lawsuit over this thing," predicted Rep. Randall, whose staff on the House Government Operations Committee is investigating the matter. "We're not going to make a case for one side or the other," he said. "We're going to let the chips fall where they may."

The people on the receiving end of all this attention, the risk managers at Amtrak and the Penn Central Transportation Co., explained their side of the story to this magazine.

Amtrak, in its operating agreement with Penn Central, has a liability agreement for intercity train traffic. Amtrak assumes liability for its passengers, employes, equipment, and any claims arising from accidents at highway grade crossings.

Amtrak said it self-insures the first $2 million of liability, a recent increase from its previous procedure of self-insuring the first $1 million. Excess liability is insured in layers, through Lloyd's and other underwriters, up to $48 million.

The crux of the problem centered around who would be responsible for crowds of spectators viewing the special train in stations at Cincinatti and Indianapolis. They would not be Amtrak ticketholders, so Amtrak would not be liable.

But they would be on Penn Central property at the time of a potential accident.

"We're bankrupt," noted a Penn Central official. "The trustees could not take on the additional responsibility of these people on the property."

He said Penn Central asked the film producers to insure for liability to $2 million. "It never got down to any deductible."

"Penn Central was exposed for the crowd situation," an Amtrak insurance official confirmed. "We would have taken the route that the crowds were not ticket holders and not covered by us." ■

Fairchild Camera . . .

Continued from page 1

persuade Marsh & McLennan to perform this service at other companies, Mr. Grogan demurred by saying "we expect to be compensated for our services. If we assign someone 100% of the time, we need something well in excess of salary," he said, adding his firm shoots for a profit margin of 10% to 15% on all business.

Mr. Grogan went on to say that a minimal account size of "$100,000 clear of expenses," a figure estimated by several risk managers and brokers contacted, was "too high" and labeled it "wild and incorrect." He declined to give out a more accurate estimate, however.

Marsh & McLennan probably would "want at least $100,000 in gross profit from commissions to consider this arrangement," said Fairchild's Mr. Schmieder.

Mr. Grogan said he believes a brokerage employe can serve the corporate client as a risk manager as well as his own firm as an account executive without any conflict of interest.

"We do a lot of evaluation studies where we report back to corporate management. We always operate on full information. We report to financial management (at Fairchild) just as in any other company," he said.

"If Fairchild were to decide it's right for them to self-insure, then we'd adjust the compensation to a fee basis (rather than commissions)," Mr. Grogan continued. "Furthermore, if Fairchild wanted to get outside quotes or didn't like our service, they could drop us," he added.

A West Coast risk manager who asked not to be identified said he doesn't see "any advantages" in the arrangement for Fairchild. "I'd be reluctant to be in the position of manager of that company. The right individual must have the client's interests first. If the in-house broker has a personal commitment to high ethical standards, then a conflict of interest can be avoided," he said.

"The Marsh & McLennan employe who is risk manager at Fairchild is being put in one hell of a position in terms of having to serve two masters," the risk manager believes. "Gaps and duplications in coverage eventually will happen," he predicted.

Mr. Schmieder views the situation as this: Fairchild has an external risk manager who reports to an assistant treasurer within the company. "He looks at the risks and makes recommendations," which are often "adjusted" based on advice from Fairchild engineers or financial personnel.

"We used to have a hard time getting brokers to volunteer loss control and other services," Mr. Schmieder said. "We don't see ourselves becoming more dependent on Marsh & McLennan just because they have access to Fairchild's financial information.

"We approached the brokers from the standpoint of 'Hey, here's a new idea for a product line,'" Mr. Schmieder explained.

"I don't see any trend (in this type of arrangement)," Mr. Grogan emphasized, adding that Marsh & McLennan has not been approached by any other companies he knows of for a similar arrangement.

"This is a specific situation. Apparently, Fairchild didn't want to hire a risk manager. We're not trying to get management to eliminate risk managers," he volunteered.

One risk manager commented, "I see professional brokerage firms moving either toward brokerage services or management services. Fairchild could be a pioneering effort for Marsh & McLennan to determine its resources this (latter) direction," he pointed out.

"Many brokers are finding it necessary to get more and more involved in insurance consulting to learn more about their markets," the Midwest risk manager said. "They found that after hiring these high paid specialists that they had a new service—risk management consulting—which should be set up as a separate organization," he continued.

"The risk of ethics comes when the brokerage and consulting functions are kept within the same organizational structure," this risk manager said.

"If the economy remains depressed, corporations could free up overhead this way," said the West Coast broker.

Such an arrangement "is not that profitable for a broker. They get into it either to get a new account or to retain an old one," said a West Coast risk manager.

"Fairchild needed the cash (freed up). It's had severe financial trouble," said this risk manager who did not want to be identified.

To date, *Business Insurance* has reported similar arrangements at Jonathan Logan Inc., (*Business Insurance*, April 29, 1974) and Cerro Corp., (*Business Insurance*, June 10, 1974).

U.S. Steel Co. has had an arrangement with Marsh & McLennan since the early 1900s in which the manufacturer receives insurance, self-insurance and other financial services. John Regan, president of Marsh & McLennan Cos. is manager of the insurance bureau for U.S. Steel.

And the University of California at Berkeley has a six-year contract expiring next June with Fred S. James of San Francisco, to provide the full time services of a loss control consultant for all campus facilities, this magazine learned.

The James consultant conducts studies for the university's risk management department. Fred S. James reportedly receives a fee to cover the consultant's salary.

A risk manager, based in the Bay Area and familiar with the University of California arrangement, said it was a way for the university to get around its highly restrictive personnel constraints. "More money was available under the risk management services budget," he said, "so the university was able to hire someone indirectly to perform a badly needed function." ■

Pension funds can't be forced into NYC bonds

NEW YORK—A lawsuit brought by city workers killed the state legislature's attempt to force state controller Arthur Levitt to invest $125 million from two public pension funds in New York municipal bonds.

(An editorial objecting to the legislative directive and earlier court action appears on page 16 and was written before the higher court reversed the decision at mid-week—Ed.)

The suit complained that the legislative mandate, made in an eleventh-hour attempt to keep the city from default, violated a constitutional guarantee that the benefits of present workers and pensioners could not be impaired.

Chief Judge Charles D. Breitel of the state's court of appeals, ruled in a 6-1 decision that the legislature went beyond its power in mandating that the pension funds be lent against the wishes of Controller Levitt.

He is sole trustee for the two funds involved and he bluntly rejected invitations by Gov. Hugh Carey to voluntarily invest the assets in New York bonds.

The State Civil Service Employes Assn., with 240,000 members, and the Police Conference of New York, with 45,000 members brought the successful challenge to the mandate. Judge Breitel agreed with their position and noted that Controller Levitt had the sole discretion under law to make wise investments for the funds.

There is $500 million in city pension and $100 million in state pension investments not solely in the controller's trusteeship, but lawyers were unable to say how those funds would be affected by the decision. ■

Signal-Imperial goes into conservatorship

LOS ANGELES—Although Signal and Imperial Insurance Cos. thwarted state insurance commissioner Wesley J. Kinder's order to stop writing or renewing policies because of insolvency, events took a surprise turn Tuesday, September 23 when Commissioner Kinder got an order of conservatorship, putting him in charge of the insurers' operations and assets until further notice.

Commissioner Kinder told Signal-Imperial to stop engaging in any business September 10, causing Signal-Imperial to respond by requesting a court injunction negating Mr. Kinder's declaration, (*Business Insurance*, Sept. 22). A judge subsequently imposed a temporary restraining order on Mr. Kinder, September 15, set to expire Wednesday, September 24. While the restraining order was in effect, Signal-Imperial could continue to underwrite insurance policies.

The company had every intention of going to court over its request for a permanent injunction against Mr. Kinder, so that it could continue doing business as if nothing was happening, despite the fact that Commissioner Kinder had described the insurance companies as "insolvent within the meaning of the (California) code section 985."

But with the imposition of a conservatorship September 23, Mr. Kinder has the upper hand, until and unless Signal-Imperial at some future date is judged to be financially healthy again, able to show adequate reserves for its premium writings. At such a time, another hearing would be held to determine whether the conservatorship should be removed.

Signal and Imperial Insurance Cos. were also ordered to cease writing insurance in New Jersey and Florida by insurance commissioners of those states.

In New Jersey, commissioner James Sheeran reported that in the first six months of 1975, Imperial wrote $167,827 in direct premiums in casualty lines and Signal wrote $1,618 in premiums.

A spokesman for the New Jersey insurance department said "We haven't been able to find an agent who represents Signal Insurance Co. in the state." ■

GUIDE TO FEATURES

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More self-insurance, new liability carriers are recent changes

University manager solves exotic risk problems

By JOANNE GAMLIN

LOS ANGELES—Broadcasters' errors and omissions, yacht protection and athletic coverages are routine stuff for Alex J. Ratka, CPCU, the first director of risk management and insurance that the University of Southern California (USC) has ever had.

The nearly 100-year-old school, which is known for its Trojan football team and for the fact that it offered, earlier this year, to build a library for former President Richard M. Nixon, is a member of an exclusive circle of California universities having risk managers on their staffs. Other members of the club are Stanford University, the University of Southern California (UCLA) and the University of California at Berkeley—which is currently seeking a risk manager to replace Irvin Nicholas.

A relaxed, easy-going individual, Mr. Ratka opened up the University of Southern California's first risk management department three years ago after a long career as an underwriter, first with Fireman's Fund America and then with the Harbor Insurance Co.

Comprehensive general liability (CGL) is the largest policy on the insurance ledger, Mr. Ratka explained in an interview with *Business Insurance*.

Thanks to the fact that underwriters lump learning institutions together with municipalities, he said that CGL has been something of a problem this year.

"In line with their decision to pull out of liability coverage for municipalities, Pacific Indemnity, our CGL carrier for 29 years, this year declined to renew our coverage," he related.

The result: Hartford Accident & Indemnity has been underwriting the $1 million primary layer of the university's CGL policy since July 31.

Stonewall Insurance Co. has the first excess layer of $4 million and the Insurance Co. of the State of Pennsylvania has the excess liability layer up to $15 million.

Since January, the most troublesome segment of the CGL policy has been the contingent medical malpractice endorsement, Mr. Ratka continued. He said it is needed to protect USC's well-known, 256-chair dental clinic—which does professional work at roughly 75% off going charges—and the bustling student health center.

However, USC also is a partner with the County of Los Angeles in the operation of the Los Angeles-USC hospital, one of the few hospitals in Southern California opening its doors to the indigent. Mr. Ratka noted that the county has become virtually self-insured in medical malpractice since it was dropped earlier this year from coverage it had held for a long time. The county has managed, however, to obtain from Lloyd's approximately 25% of a $25 million excess policy, he added.

The CGL premium is "very attractive" in the mind of this risk manager, who graduated from USC in 1950 in egineering. While he declined to be specific, he indicated that the premium is in excess of $150,000 a year.

The second largest premium paid by the university is that for all-risk property coverage supplied by Mr. Ratka's former employer, Harbor Insurance.

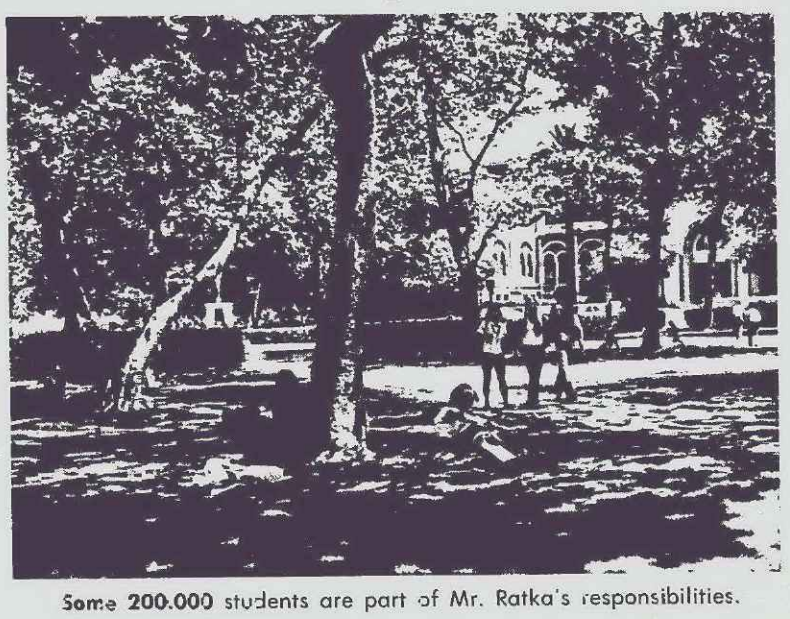
A $182 million limit caps the policy, which has a premium—that Mr. Ratka also likes—in excess of $120,000. The deductible is $25,000.

The coverage protects such heavily-used structures as Dedeaux Field, the baseball stadium built to be a double of that used by the Los Angeles Dodgers.

A proponent of low deductibles, Mr. Ratka recalled one instance when he reduced the deductible on a fire policy from $50,000 to $25,000 and, at the same time, shaved the premium.

Brokering the huge property/liability coverage for USC is Marsh & McLennan, Los Angeles. The group health area, which is overseen by the controller and by the director of personnel as well as by Mr. Ratka, is in the hands of Johnson & Higgins, Los Angeles. A number of small agencies such as Julian Wolf, Los Angeles, and the Continental Agency Co., Salt Lake City, broker smaller coverages.

Observing that he accepted this job because years ago he had become acquainted with Robert Beth, risk manager at Stanford University, and thought his job stimulating, Mr. Ratka acknowledged that he came to USC with changes in mind. Chief among the changes he spearheaded was a move to self-insure workers' compensation and unemployment compensation.



Some 200,000 students are part of Mr. Ratka's responsibilities.

That move began, of course, only three years ago. Yet today Mr. Ratka calculates that the university has saved $500,000 in workers' compensation premiums and $2,500,000 in unemployment compensation premiums.

It should be noted, too, that the workers' compensation savings were made while counting in the cost of administrative services which the risk manager receives from the Employers' Self-Insurance Services (ESIS), a unit of the Insurance Co. of North America. The university pays ESIS approximately $16,000 a year.

Argonaut Insurance Co. is the underwriter for workers' compensation in three European nations and in Antarctica, where USC maintains small campuses.

The fact that the university, which has some 20,000 students, has been safety-minded—it wasn't even the target of bombings during the unrest of the 1960s—is a large plus in the mind of Mr. Ratka, a member of the University Insurance Managers Assn. He noted, for instance, that his loss ratio under the all-risk coverage is less than 10% Loss experience on the CGL policy, too, has been on the low side, Mr. Ratka indicated.

Moreover, the directors' and officers' liability policy, which since last year covers all employes, has brought in no claims in the last three years, he aserted. The policy for a long time was underwritten by Harbor Insurance Co. But it now involves two layers: a $3 million limit from Continental Casualty Co., Chicago, and a $2 million excess layer from Stewart, Smith, Haidinger Inc., Los Angeles.

A comprehensive blanket crime policy with a $1 million limit from Federal Insurance Co., has resulted in two losses, Mr. Ratka disclosed. One was for $3,000 and the other for $2,000. Both were "internal jobs," the work of members of the school's large, 7,000-person workforce. The policy carries a $1,000 deductible and an $8,500 premium.

Pacific Indemnity is the underwriter for USC's boiler/machinery protection, which has a limit of $4 million per occurrence. The annual premium is $3,000.

Romantic-sounding coverages such as broadcasters' E&O round out the USC insurance coverage. Noting that the E&O protection is demanded to cover performers on the schools's two radio stations—one of them is KUSC, a leading outlet for classical music in Southern California—Mr. Ratka pointed out that the policy has not generated a claim in nine years.

Stewart, Smith, Haidinger Inc., is the underwriter for the coverage, which offers a $250,000 limit for any one person and a $500,000 limit for any performance.

Protection for the 22 yachts which dot the landscape at the USC Santa Catalina marine 'campus' is supplied by Continental Group. The limits are set by the value of the vessels insured. Both indemnity and hull coverage are covered by the policy.

Mr. Ratka was quick to point out that one of the vessels insured by this policy is a $600,000 research ship called the Velero. It can boasts of the exotic mission

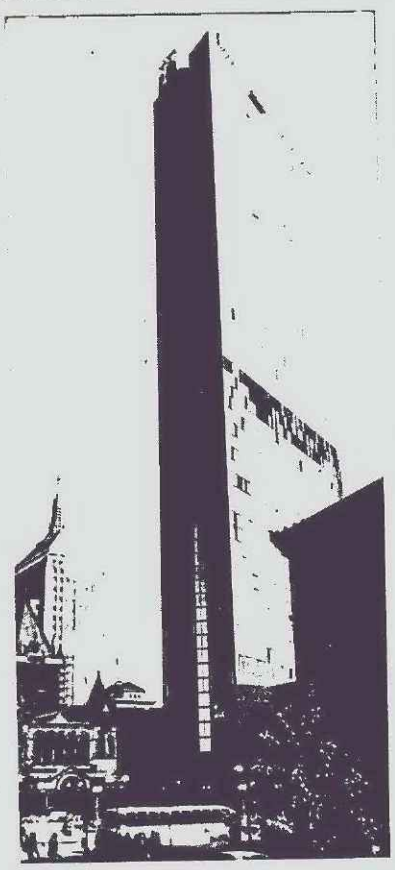
Continued on page 4

Suppliers share in Hancock's tower of troubles

By MARIE KRAKOWIECKI

BOSTON—John Hancock Mutual Life Insurance Co. is suing the contractor, subcontractor, glass manufacturer and architect of the still uncompleted 60-story tower intended as its new home office.

It is suing two insurance companies which furnished nearly $17 million in performance bonds to the contractor and subcontractor.



Temporary plywood panels replace the Hancock Tower's original glass panes.

The suit does not specify a dollar amount, and Hancock refuses to comment on the matter. But local observers have pegged damages at approximately $50 million.

The implications for liability insurance of those named in the suit are not yet clear. Some of the defendents were already slapped with a suit by neighboring Trinity Church over the tower. And Trinity Church, along with a local Young Women's Christian Assn. building near the tower, have sued Hancock itself for a total of $4.2 million.

The issues in the suits are different. Trinity's suit concerns damage to its fragile underground piling foundation. The suit brought September 15 by Hancock against those involved in the design and construction of the tower deals largely with expenses incurred after more than 10,000 glass units blew off the face of the tower and had to be replaced.

Hancock has turned over the suit in which it is the defendant to its own insurer, Continental Casualty Co., Chicago, and would not comment on the connection between that suit and the one it initiated in Cambridge last month.

Hancock named the following defendants in its suit: Gilbane Building Co., a private Providence, R.I. firm which served as general contractor; H.H. Robertson Co. of Pittsburgh, subcontractor for the glass curtain wall; Libbey-Owens-Ford Co. of Toledo, Oh., which designed, manufactured and sold the glass panes which broke; and the New York architectural firm of I.M. Pei and Partners.

The 19-count suit also names Aetna Casualty & Surety Co., Hartford, and the Federal Insurance Co., New York.

Aetna supplied a $10 million performance bond to Gilbane, payable to Hancock, while Federal supplied a $6.9 million performance bond on H.H. Robertson, also payable to Hancock.

None of the defendants in the suit would comment on their liability coverage, but the insurance is thought to play a key role in this case, if for no other reason than the size of the job.

Insurance generally represents from 5% to 10% of total construction costs for contractors and subcontractors. Liability costs account for about 3%. Architects are charged premium rates for errors and omissions insurance that are commensurate with their billing receipts for the year.

The Hancock tower was a major job for all the firms connected with it. The original cost estimates were in the area of $50 million, when the tower was begun. Since then, the costs have zoomed to over $100 million.

One of the most frequent complaints of architects' E&O coverages is that when experience is rated, it is not done on an individual firm's performance, but on a class basis for certain areas of the country. There is some chance, then, that the suit against Pei could have a negative impact on other architects' E&O coverage rates.

Bad luck dogged the tower ever since construction began in 1968. The original target completion date of 1971 was delayed until mid-1976. Not only did Hancock have to stiffen the entire tower by adding braces, but earlier this year it laid out about $6 million to replace the entire glass curtain wall with thermopane units after some 10,344 original panes "failed."

Much of the glass was replaced with an ugly, although temporary, patchwork of cheap grade wood panels. Local pundits began calling the place "The Plywood Ranch" or "Plywood Plaza."

Whatever humor there may have been in the situation was probably lost on Hancock. Soon after plywood mottled the sides of the tower, local fire authorities were horrified and ordered the company to paint each and every panel with black fire retardant paint. (*Business Insurance*, May 13, 1974).

The Boston law firm of Hale & Dorr filed the complaint on behalf of John Hancock. It claims that I.M. Pei and Partners were negligent in the design and supervision of construction and breached their contract. It charges Gilbane, Robertson, and Libbey-Owens-Ford all with negligence and breach of warranty. Gilbane and Robertson are also charged with breach of contract.

The complaint alleges John Hancock has sustained substantial damages, including but not limited to the cost of labor and materials for removing and replacing the glass units in the curtain wall, additional design, engineering and construction costs and increased operating expenses and other costs.

It also claims Hancock has sustained damages by being deprived of the use of the tower and lost income on rentals. ■

Set time schedules for product correction

WASHINGTON—Tight time schedules for industry action on substantial product hazards or defects has sparked renewed conflict between the Consumer Product Safety Commission (CPSC) and at least two major business groups —the National Assn. of Manufacturers and the Electronic Industries Assn.

Manufacturers are already required to report substantial product hazards or defects to the commission within 24 hours of their discovery.

Effective October 25, however, the commission (CPSC) intends to set a deadline of 30 days after such notification for agreement on how to correct the problem.

Commission officials said the agreements could be in the form of a voluntary corrective action plan devised by the manufacturer, or a proposed consent agreement between the manufacturer and the CPSC.

In the absence of either of those remedies, the CPSC staff, also within 30 days of the original notice, is to present the commission with a proposal to take the manufacturer into an administrative proceeding to compel a solution.

The staff could also recommend that the entire case be dropped, but that recommendation must also come within the 30 day period after original notice.

The CPSC had never before set time guidelines for corrective action.

Once a voluntary corrective plan or consent proposal is submitted to the commission it becomes a public matter, and that is of major concern to industry, according to a spokesman for the National Assn. of Manufacturers.

"Even before anyone has determined that a real substantial problem exists, it would be public," the spokesman said.

The publicity would expose the manufacturer to greater liability threats "when there is no real evidence that problem exists," he said.

Publicity would also prove to be a competitive liability for the manufacturer concerned.

Industry groups are also upset by the attitude the Commission is taking on the issue. The new time deadlines were to have been effective last August 25, but were delayed until October by industry request. ■

Chrysler Corp. restores benefit plan payments

DETROIT—Chrysler Corp. restored supplemental unemployment benefits (SUB) to 7,000 eligible laidoff workers beginning Sept. 22, although the automaker expects the fund to be depleted in three to four weeks because of the high number of employes on temporary layoff during the annual model changeover period.

Under current production schedules, work on 1976 models should bring enough employes back to work so that the $2 million SUB fund can begin paying benefits again in late November, according to John Montgomery, manager of industrial public relations. After that, the fund should receive enough contributions—at the rate of 12 cents per employe-paid-hour—to allow payment of benefits to the remaining laidoff hourly workers indefinitely, he added.

Benefits restored last Sept. 22 were reduced 20%, under the provisions of the SUB plan, because the fund was still below the level of $58.50 per covered worker. Payments cease when the fund goes below $18 per eligible employe.

Between November 1974 and April 1975, the SUB fund paid out about $80 million in benefits to laidoff Chrysler workers, Mr. Montgomery said. Chrysler has been contributing about $200,000 per week, he added.

Under the SUB plan, benefits are calculated at the rate of 95% of after-tax pay minus $7.50. SUB payments supplement unemployment compensation to bring the total payment to this level. ■

University . . .

Continued from page 3

of plying the oceans around the world. Actor John Wayne's ship also is insured by the Continental policy.

On the other hand, insurance for the crew equipment in the racing shells is handled by Julian Wolf, a local firm selected partly because the coverage here is small.

Airborne students and the USC population in general are covered by a group travel accident policy from Continental Casualty Co. The first-dollar policy offers $100,000 limits for employes and $5,000 limits for students.

Students who opt for voluntary Blue Cross health coverage ante up the largest aggregate premium to flow from the university, Mr. Ratka noted. He said that the 5,000 or so students who subscribe to the plan pay approximately $100 a year for supplementary health services, including 365 days of hospital care. Thus their aggregate premiums are an impressive $550,000 a year.

Three underwriters share the job of insuring USC group health protection. They are Blue Cross of Southern California, the Pacific Mutual Insurance Co. and Ross-Loos, which offers a prepaid health insurance plan.

All three plans are contributory, pointed out Mr. Ratka. The only out-of-the ordinary segment of the USC employe benefit program is the new payroll deduction auto liability plan. "Popular" is the word for it, he underlined.

Although Mr. Ratka and his administrative assistant, Patricia Tyner, have studied the idea of a dental plan, they have tabled the coverage, concluding it to be too costly. ■

450% inflation

Malpractice insurance premiums were up 450% in a survey of local price increases published by Philadelphia magazine. The survey, called "165 Reasons Why You're Going Broke," compared an area physician's 1974 premium of $6,000 to the 1975 premium of $27,000. It also itemized other consumer products price changes. Nothing even came close to the increase in malpractice rates, but runners-up were canning lids, up 200%; sardines, up 174%; and bubblegum, up 100%. One of the few things that cost less in 1975 than in 1974 were the rates of no-fault bodily injury car insurance, which dropped 15%.

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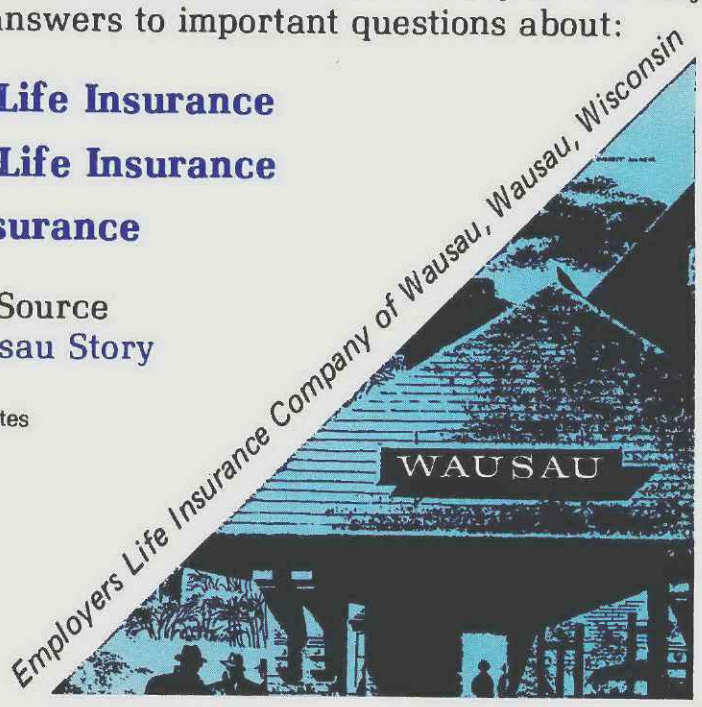

Canadian brokers look to new law to spark a boom in sales of D&O

By MARIE KRAKOWIECKI

NEW YORK—Directors' and officers' liability insurance, a long-time sleeper in Canada, shows signs of awakening at the end of this year.

A piece of federal legislation, the Canada Business Corporations Act, is expected to be signed into law in late 1975. One of its major thrusts is to redefine the responsibilities of corporate directors and officers.

In part, it is modeled after the Delaware Corporation Act that touched off a big demand for directors' and officers' liability insurance in the United States in the 1960s. And Canadian risk management and brokerage sources are predicting it could create the same kind of demand in their country.

Canada already has some provincial legislation, notably in Ontario, that touched off partial demand for D&O coverage in 1970. Nevertheless, current estimates peg Canadian purchasers of corporate D&O policies at between 10% and 20% of all major companies. This compares to about 70% of United States firms which buy that type of insurance. (And some of the Canadian purchasers of D&O coverage are "tag-alongs" because they are subsidiaries of big U.S. firms already having the coverage.)

Warren Brockmeier, director of risk management services of the Wyatt Co., which publishes a yearly survey report on D&O, put it another way:

"Only about 60% of big Canadian firms have the same interest in purchasing D&O coverages as big United States firms, based on our samples," he said. The overall estimates of between 10% and 20% of Canadian firms buying D&O would most likely include small operations as well as corporate giants.

Marsh & McLennan's Montreal office recently sent a general letter to all its major clients outlining the pending legislation and suggesting they look at quotations for directors' and officers' liability coverages which might be appropriate.

Tomenson Saunders Whitehead Ltd., a Toronto-based broker, is gathering more information about the coverages so it can anticipate any increased demand for D&O by its clients. It is staying low-key about its efforts, but was the first firm named as a new activist in D&O coverages by a leading risk management source in Canada.

Similarly, a spokesman for Reed, Shaw, Stenhouse, the chief subsidiary of giant Canadian broker Reed, Shaw, Osler, said his firm is definitely stepping up its efforts to market D&O policies in anticipation of the new law.

Since the law gives corporations a five-year grace period before they have to meet all of its requirements relating to directors and officers, many brokerage sources still think the move to D&O coverages will be gradual.

For instance, Johnson & Higgins, which has a big Canadian operation, said it had "nothing significant" to report about increased interest in D&O as a result of the new legislation.

Most of the other brokerage sources reached felt the law would boost demand for D&O. One told *Business Insurance* that what he was basically doing was gathering "propaganda" on the coverages.

Jarvis DeConde, a senior account executive for Marsh & McLennan's Montreal office, was one of the few Canadian brokers reached who was frank about stating his firm was "certainly" becoming more interested in offering D&O as a result of the new legislation.

Mr. DeConde believes the Canadian Business Corporation Act could trigger the same kind of demand for D&O in Canada that the Delaware laws triggered in the United States, with one major qualification:

Canadians just are not as litigation-happy as their American neighbors, and are therefore not as likely to suffer from a spate of lawsuits requiring D&O coverages. Canadian lawyers do not operate on contingency fees the way U.S. attorneys do, so the motivation to press for big judgments isn't as prevalent.

Furthermore, under the new Canadian law, anyone who wants to file a non-derivative (non-stockholder) lawsuit against directors and officers of a corporation will apparently first have to appear before a trial court to prove there are sufficient grounds for the suit.

Because of the legal climate and the limited past experience of Canadians with any major D&O claim, Mr. DeConde feels that even though the interest in the coverage will be spurred by the upcoming legislation, the most new business it might generate would fall at least 15% to 20% below the levels of D&O purchased in the United States.

One aspect of the situation most appealing to Canadian brokers and American brokers operating in Canada is that any new demand for D&O policies can serve as a lever to get new accounts.

Most big brokers with major clients carry the lion's share of each corporation's account. But there are many small commercial accounts which brokers haven't been able to wrest from their competitors. If they can approach prospects with a sound plan for marketing D&O, some of them are hoping to woo other lines of business as well, a Toronto researcher commented.

Meanwhile, insurance rates for D&O in Canada are apparently seesawing in wide swings, although they have generally declined over the last three years.

American Home Assurance and Lloyd's of London are the two markets said to underwrite the bulk of D&O policies in Canada.

One major broker said Lloyd's hasn't been competitive for a long time on premium rates for the coverage. His company's Montreal branch wrote roughly a quarter of a million dollars of D&O three-year premiums, with limits running between $1 million and $15 million. But much of the business was originally written when rates were higher.

"We can go with one risk to three different companies and there could be as much as a 100% difference in the prices they quote," the broker said, typifying the rates as "yo-yos."

He blamed the rate variations on the fact that some insurers, particularly American Home, broke into the Canadian D&O market without knowing enough

Continued on page 8

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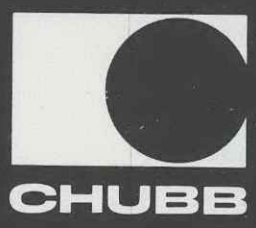

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Canadian D&O . . .

Continued from page 6.

about Canadian pricing. Thus, they were charging "premium premiums." When underwriters saw the policies weren't selling, according to the account executive, they began lowering their prices. The end result was a patchwork of entirely different D&O costs, which exists now, and has been even more confused by the anticipated reactions to the new law.

"D&O by and large is a coverage that has been dormant for a long time in Canada. If anything can jolt it into life, it will be the Canadian Business Corporations Act when it goes through," another broker commented.

Daniel E. Sullivan, risk manager for Montreal's Northern Electric Corp. Ltd., one of the few Canadian firms that has been purchasing D&O, also agrees the demand will be greater.

Mr. Sullivan, who is also president of the Risk and Insurance Management Society, noted that Ontario took the lead in outlining further responsibilities of directors and officers in its provincial legislation. But his firm, and most of the country's firms haven't yet had major D&O claims.

"The risks just aren't that wild in Canada," Mr. Sullivan commented. "But we'll probably follow the ways of our Southern neighbor in getting increased D&O policies. It seems inevitable." ■

PBGC moves

The Pension Benefit Guaranty Corp. (PBGC) moved to new offices at 2020 K. St. NW, Washington, D.C. 20006, from former quarters in Silver Spring, Md. The mailing address remains P.O. Box 7119, Washington, D.C., 20044. The new telephone number for general inquiries is (202) 254-4817.

info for buyers

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

• **You and the High-Rise Building Fire**, written by Dr. Anne W. Phillips, discusses the physiological and emotional problems faced by human beings, especially the elderly, when confronted by fire. Dr. Phillips is a surgical researcher at Massachusetts General Hospital, Boston. Price is $2.50. To order, write to the Society of Fire Protection Engineers, 60 Batterymarch St., Boston, Ma. 02110.

• **The HMO Complex: Auxiliary Corporations**, written by Dan Maruna, is available from Protech Publications. Price is $4, but there is a 25% discount to *Business Insurance* subscribers. To order, write to Protech, 2182 Dupont Dr., Irvine, Ca. 92664.

• Man and Manager Inc. is offering a free sample of **Safety and Security for Supervisors**, a 40-page pocket-size daily calendar, published monthly, which provides an on-going supervisor training program in OSHA regulations. The datebook contains questions and answers on OSHA, a safety checklist form and case histories and articles on all phases of industrial safety and security. For a free sample, write to Man and Manager Inc., 799 Broadway, New York, N.Y. 10003.

• A brochure from the National Assn. of Insurance Agents tells **How to Avoid Costly Mistakes in Business Insurance.** A loss exposure checklist is included. For a free copy, write to James M. Shea, NAIA director of advertising, 85 John St., New York, N.Y. 10038.

• International Service Corp. (ISC), a subsidiary of INA Corp., is offering a **Directory** of its worldwide services. The booklet contains lists of international offices, indexed by city and country. Also available is a descriptive brochure on ISC, called **Until Now. Until ISC.** For free copies, write to John Wansink, ISC, 1600 Arch St., Philadelphia, Pa. 19101.

• A brochure on Stewart Smith's new **Law Enforcement Liability** coverage is available. Eligibility is limited to groups or departments and the program covers police, security officer services, guards, custodians, etc. Applications and a specimen policy are included with the brochure. For a free copy, write to Stewart Smith, Attn: Law Enforcement Dept., 125 S. Wacker Dr., Chicago, Il. 60606.

• U.S. Government publication of interest: **Emergency Services Guide For Selected Hazardous Materials** provides transportation industry workers with emergency information, presented as a series of steps, for minimizing the danger of toxic or volatile liquid/gas spills. A total of 30 hazardous materials, ranging from acrolein to vinyl chloride, are given two-page treatments that tell their potential dangers, immediate action to be taken, specific fire, spill and first aid information, a table of evacuation distances, and water pollution control information where applicable. Order No. 050-000-00092-3. Price: $1.40. Order from Public Documents Distribution Center, 5801 Tabor Ave., Philadelphia, Pa. 19120. Make checks or money orders payable to the Superintendent of Documents; do not send cash.

• Underwriters Laboratories has published a new **Catalog of Standards for Safety.** It is designed to be a handy reference tool when ordering any of UL's more than 300 "Standards for Safety," To receive a copy, write Underwriters Laboratories Inc., 333 Pfingsten Rd., Northbrook, Il. 60062, Attn: National Standards Stock.

• **Total Claims Service**, published by Underwriters Adjusting Co., describes the company's comprehensive claims adjustments programs for firms that self insure. For a free copy write Robert L. Tatro, manager, marketing, Underwriters Adjusting Co., 224 S. Wacker Dr., Chicago, Il. 60606.

Updating items

NOTE TO THOSE WHO HAVE PREVIOUSLY SUBMITTED INFO ITEMS: Most Info for Buyers offerings are repeated about four times a year. If there is a change or an item is discontinued, please let us know.

• The Wyatt Co. is offering a pamphlet—**What to Look for in Captive Company and Self-Insurance Feasibility Studies**—that defines the objectives of a feasibility study and the factors to be considered in a study of this nature. The pamphlet is written by Warren G. Brockmeier, director of risk management services at Wyatt, and it originally appeared in Risk Management magazine. For a free copy write Warren G. Brockmeier, The Wyatt Co., One First National Plaza, Chicago, Il. 60603.

• **How to Insure Trust Departments Properly,** a reprint of an article by Bernard J. Daenzer, president of Wohlreich & Anderson Ltd., has been made available by the company. The article discusses errors and omissions coverage for trust departments and includes several examples of recent large losses along with the results of a bank trust department survey. For a free copy write Anthony Bova, Wohlreich & Anderson Ltd., 55 John St., New York, N.Y. 10038.

• **Permanent Value Group Life—as a Supplement to Group Term,** published in September by Washington National Insurance Co., describes an option for employes insured under the carrier's group term contract. Basically, the alternative allows all or part of the group term life insurance to be supplemented with permanent life insurance having cash and loan values. The coverage becomes fully paid after 10 years or upon retirement at age 65. For a free copy of the brochure, write Robert A. Hermann, CLU, Director of Group Marketing, Washington National Insurance Co., Evanston, Il. 60201.

Client relationship not affected by earnings overstatement: Broker

MEMPHIS—Cook-Treadwell & Harry Inc., ranked as the 20th largest brokerage firm in *Business Insurance*'s Agent/Broker issue, said its consent to a Securities and Exchange Commission (SEC) order involving an overstatement of earnings for fiscal years 1971 to 1973 would not affect its broker/client relationships.

A company spokesman said Cook-Treadwell found the mistake in May, 1974 and informed the SEC. "We haven't experienced any adverse effects from the error," he said, adding that the overstated earnings did not affect Cook-Treadwell's ranking among the largest brokers.

The figures on brokerage gross revenues and premium volume submitted to *Business Insurance* for those years did not include Cotton Belt Insurance Co., the subsidiary that had the disputed earnings report.

"We've filed 1974 statements with the SEC which were audited and certified by our new auditors," the spokesman continued. "Therefore, neither the company nor the auditors have any reason to believe the statements are incorrect in any way."

The SEC required the firm to revise its 1972 and 1973 financial statements and found the company, which is 96.3% owned by Cook Industries Inc., had also overstated earnings in a 1972 registration statement for the sale of 300,000 common shares.

Cook-Treadwell last November offered to repurchase all the 300,000 common shares sold on the basis of the incorrect 1972 registration statement. At the time, its lawyers said it was not necessary to obtain prior SEC approval.

Part of reason the company, based here, is making another offer to repurchase shares involved in the 1972 earnings incident is because the firm "wanted to cooperate fully with the SEC," an observer said.

"The company has been informed by the SEC that in its view the registration (for the November 1974 offer) was required. . .The company subsequently decided to make the offer that we're making now"—namely to repurchase the common shares from individuals (who still have them) purchased between 1972 and 1974 and to allow those who sold the shares back to Cook-Treadwell in November to purchase the shares again, the spokesman explained.

Cook-Treadwell repurchased 274,000 common shares for about $2.2 million, the SEC said. The company paid $540,000 to investors who had sold their shares at a loss between the 1972 offering and May 8, 1974 to compensate them for the difference between the purchase and selling price. The company also hired new auditors. ■

Deny request for comp hike

TALLAHASSEE—A 12.5% request for a premium hike in workers' compensation coverage was turned down Sept. 8 by Florida Insurance Commissioner Philip F. Ashler.

The National Council on Compensation Insurance, who filed the request submitted May 6, also wanted to change the wage base formula from $100 a week to $300, the insurance commissioner's office said.

"The practical effect. . .would be the imposition of a premium increase for some employers in Florida," Mr. Ashler said.

He charged the workers' compensation underwriters "did not satisfactorily defend their contention that a change in the wage base formula would not cause excesive and continuing jumps in the amount of premiums paid by employers." ■

New dental program for Chicago teachers

CHICAGO—The Chicago Teachers' Union won a new dental program and increased hospitalization coverage for some 50,000 teachers and Board of Education employes in its new contract following an 11-day strike.

The dental program, costing an estimated $4.5 million for the year, will give teachers and other board employes $1,000 in dental benefits annually with a one-time $50 deductible.

Insurance will cover 100% of reasonable and customary charges for preosthodontic, periodontics and orthodontics. Dependents are not covered. This portion of the contract becomes effective Dec. 15th, according to Lester Davis, a union spokesman.

Hospitalization coverage has been increased 300% effective Jan. 1, 1976 from 120 days to 365 days at an estimated additional cost of $100,000 to the Board of Education.

Blue Cross/Blue Shield of Illinois, which insures the basic hospital coverage will insure the expanded benefit portion also, according to Michael J. O'Malley, director of insurance and employe benefits for the Board of Education, city of Chicago. Dependents as well as employes are covered in this program.

Mr. O'Malley said the board will look at Delta and Blue Cross/Blue Shield first for the dental coverage because he believes there is "no catastrophic risk involved with a $1,000 maximum yearly benefit." He thinks a claims payment program will serve the union's need best.

"We're also talking to some carriers but if that's not really competitive then we'll look to the service companies," Mr. O'Malley said. Among the companies asked to submit quotes are the Equitable Life Assurance Society of the U.S. and Prudential Insurance Co. of America.

The Board of Education has used the brokerage services of Corroon & Black, Frank B. Hall and Fred S. James in the past.

If dental coverage is put out to formal bid, Mr. O'Malley said he probably would select Milliman & Robertson, a national consulting actuarial firm, to assist him in evaluating the bids.

Although only 33,000 teachers are represented by the union and its bargaining unit, an additional 17,000 non-member teachers and board employes are covered by the contract settlement, which is expected to be ratified by the union soon. ■

Watch out for trucks on highway

WASHINGTON—Tractor-trailer trucks have dramatically higher fatal crash involvement rates than other vehicles, outstripped only by motorcycles, the Institute of Highway Safety said.

The institute studied different sized vehicles in fatal crashes, and the relationship between size and other factors in 1,440 fatal crashes in Maryland during 1970 and 1971.

Data showed that although only 1.3% of the vehicles involved in all reported crashes were tractor-trailers, 3.6% of the vehicles involved in the fatal crashes were tractor-trailers.

In collisions involving a tractor-trailer and another vehicle, 12% of the occupants of tractor-trailers were killed, compared to 57% of the occupants of other vehicles.

The study also showed that in collisions involving traveling in the same direction, two-thirds of the crashes involved a truck running into another vehicle from behind. ■

Form new company

Leggetter & Co. Inc. and W. Warren Yeager, a fellow of the Society of Actuaries, formed a new firm of consulting actuaries called Legetter & Yeager Inc. Complete actuarial and employe benefit consulting services will be offered by the Dallas-based firm.

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See 100% increase in Illinois comp rates

CHICAGO—Illinois workers' compensation insurers will request, and receive, rate increases of around 100% by early 1976, predicted a labor relations specialist who represented employers while amendments to the Illinois law were being drafted.

Leonard Day, manager of the labor relations department for the Illinois State Chamber of Commerce, noted that workers' compensation insurance rates have already escalated an average of 46.8% retroactive to July 1 when the new state law became effective.

"My guess is that about the first of the year the insurance department will authorize a 100% increase in work comp premiums," he told an audience of CPCUs as the local chapter meeting.

In his explanation of some major changes in comp rules as a result of passage of the amendments, he cited a case of "one of the larger employers in Illinois examined its records of death benefits paid in the past and calculated that its average death benefit was $29,000. Then they computed average death benefits under the new law and the figure came out to be $330,000."

The amendments for all practical purposes mandates that every employer in Illinois have workers' compensation insurance coverage, said Mr. Day. "I've heard it said that many small firms in Illinois will run the risk of bankruptcy because they don't realize they're covered" by the liabilities imposed under amendments to the state workers' compensation act, he added. Mr. Day noted that very few companies are excepted.

Under temporary total disability provisions, actual average wages used to determine benefits payable in the event of employe injury will include fringe benefits and all other remuneration, a change from past practice, said Mr. Day.

A temporary total incapacity benefit is now paid after a disability of three days (lowered from seven days under previous rules), and is now paid retroactively for the first three days if it continues for more than 14 calendar days (lowered from the previous 21 days), explained Mr. Day.

Amendments provide for employe to choose their own doctors, at the employer's expense, subject only to change by order of the state industrial commission, he said. "However, employers can direct the injured employe to see the company's own physician" to verify the condition of the disabled worker and to verify and check on the appropriateness of treatment prescribed by the employe's doctor.

Under the occupational disease clauses of the amendments, the major change is that the definition of OD is expanded to encompass any disease that might be caused or aggravated by the employment, Mr. Day told the group. "The 'ordinary diseases of life' exclusion is removed," he added. Mr. Day said some work comp experts believe there may be more claims, filed against companies after the deaths of former employes if the death occurs within three years of employment, claiming occupational diseases, as a result of this provision.

Penalties against employers were increased substantially by the amendments, Mr. Day lamented. The key penalty areas are:

- A self-insured employer can be disqualified as such and ordered to buy workers' compensation insurance, in addition to having to pay attorney's fees and costs if he practices delay or unfairness toward employes in adjustments, settlement, payments, etc.
- Delay, refusal, neglect etc. in total temporary disability payments can cause a $10 per day added compensation cost. A delay of 14 days creates a "rebuttable presumption of unreasonable delay," Mr. Day noted.
- If the disability stems from a "willful" violation of OSHA, the award can be increased by 25%.

Mr. Day summarized the changes by advising employers to keep meticulous records regarding all facts, information, sources, etc. upon which all workers' compensation and occupational disease determinations are made. ■

Product liability may go to claims-made basis

CHICAGO—Product liability coverage will be written on a claims-made basis within two years, predicted a defense attorney specializing in product liability litigation.

"Half of the 10 major insurance companies our firm works with as clients have discussed it," said John T. Coleman, an attorney with Baker & McKenzie, a law firm based here.

A no-fault solution to products liability would "not work because it would not cure the problems of coverage questions" prompted by the four-month-old Berry vs. G. D. Searle decision, handed down by the Supreme Court of Illinois. He spoke at a meeting of the Risk and Insurance Management Society here.

That decision, explained Mr. Coleman, established that the two-year statute of limitations would begin at the time of the accident, not on the date the suit was filed or when discovery of the injury was made. This part of the decision is beneficial for manufacturers, he pointed out, calling the ruling a "mixed blessing."

Mr. Coleman predicts that insurance carriers will raise questions of coverage once the full impact of the Searle decision is felt.

An irony of that particular case is that it was successfully refiled under the Uniform Commercial Code (UCC) which holds a manufacturer liable under product warranty for four years.

"So don't throw away your files after two years," Mr. Coleman advised the risk managers present.

The court ruled that although the claim is valid for up to four years, UCC provisions must be followed, he continued. "As soon as you are aware that a breach of warranty is known, you must give the manufacturer notice of a possible claim."

" 'Berry' gets rid of some claims under the statute of limitations but opens a Pandora's box on a lot of claims which should be dead," said Mr. Coleman, who also serves as regional chairman of the Defense Research Institute, a non-profit organization based in Milwaukee.

Another case, Burke vs. Skyclimber, is also important to risk managers because of precedents it sets on product liability.

The Illinois Supreme Court found in that case that a manufacturer "cannot pass on any liability it may originally have to the consumer or someone else who makes alterations in the products," he explained. Included under this ruling are active negligence, strict liability in tort and breach of warranty.

"If both parties are found guilty, the verdict is split because both are joint tortfeasors," Mr. Coleman said.

"Third party actions may have been significantly altered by this decision," he believes. "The courts are not exactly enamored with third party actions anyway. The only hope for a product liability defense (as defined by) 'Burke' is to emasculate the state supreme court's decision in some way."

The courts "don't like indemnification agreements in which the general contractor is held harmless from the subcontract," Mr. Colemas pointed out. "You cannot be indemnified unless the subcontractor expressly agrees to indemnify the liability as a result of work done by him regardless of who is negligent," he added.

Comparative negligence is a more "equitable" way of handling many of these lawsuits, he believes.

Settlements under the new workers' compensation law are "higher—maybe triple what they used to be," Mr. Coleman said. "The insurer then can turn around and sue the manufacturer to recover the workers' compensation claim. It used to be that the manufacturer could also turn around and sue the employer for negligence. But this can't be done any more," he explained.

"Federal rules of evidence have emasculated previous rules," Mr. Coleman continued. "It has allowed plaintiffs' attorneys to get expert witnesses with proper credentials and simply ask them if they've had an opportunity to examine the widget in question.

"If the witnes says yes, the attorney just asks if he thinks it is unreasonably dangerous. If the witness says yes, the attorney asks if he thinks it caused the accident in question," he said. "It depends on the trial judge whether an attorney can cross examine the expert witness. This is a great change," he added.

"The best way to beat a products case used to be to discredit experty testimony and (thus) keep the case from getting to a jury. Now it's going to be very difficult for the defense to use this option," he added.

Mr. Coleman went on to comment that the adverse verdict range "has gone all over the board." Settlements for death cases range "from $200,000 to $2.5 million," he said.

"If (Illinois) Governor (Dan) Walker's bill establishing the $500,000 ceiling on medical malpractice awards in the state is found to be constitutional, then the legislature should pass the same type of law for product liability cases," Mr. Coleman said, who believes a big part of the problem is today's juries.

"Who do you see on your juries? Not engineers or people in positions of authority or people who work day in and day out for a living. These people want to be let off jury duty. Then you wonder why you get these ridiculous settlements," he told the corporate representatives.

In defending a product liability case, Mr. Coleman said he prefers working "directly with the corporation and not with the insurance carrier even though they are paying my fee." ■

editorial opinions

Reprehensible action

THOSE WHO MUST ponder the fiduciary liability question for corporation pension funds have reason to envy fiduciaries of the New York state and city pension funds.

The New York State Supreme Court has ruled that investments in Municipal Assistance Corp. (Big Mac) bonds are not in violation of standards governing the appropriateness of investments for pension funds, which are contained in the state constitution. The decision, in effect, makes the investments prudent and eliminates the potential liability for state and city officials who act as fiduciaries. The ruling by the court was sought after the New York state legislature mandated that New York City and state pension funds buy more than $700 million worth of Big Mac bonds to help the city out of its fiscal crisis.

The legislation, moreover, declared obligations of Big Mac bonds for New York City are "reasonable, prudent, proper and legal investments for (the state and city funds) or for any board member, officer, employe, trustee or fiduciary thereof to make on behalf of the fund."

The action by the New York legislature, and supported by the court, (now being appealed by the Civil Service Employes and the New York State Police Conference, by the way) seems to be a case of government saying, "Do as I say, not as I do." It's extremely doubtful that corporate fiduciaries could get the same relief from the legislatures and courts prior to investing in Big Mac or any other vehicles for their funds—especially since the passage of the Employe Retirement Income Security Act.

We're not in a position to comment on the ultimate prudence of Big Mac bonds as investments, and we would have to look higher than the courts to find one who is, but we find reprehensible the New York lawmakers' action to relieve fiduciaries of their responsibilities.

And it is even more reprehensible in view of the awesome scope of those responsibilities: to preserve the value of monies belonging to retirees and eventual retirees.

Pension funds—both public and private—are a trust, and that trust seems to have been violated in New York.

Early diagnosis

WE FIND INCREASING merit in a suggestion that has been bandied about by some insurance regulators and others observing the regulatory process that state insurance departments should conduct pre-audit examinations of companies domiciled within their own states.

The suggestion was made again by Benjamin C. Neff, former insurance commissioner for Nebraska, during an interview for a story in this magazine's last issue (Sept. 22), and it seems especially timely in view of a declaration of insolvency late last month of the Imperial and Signal Insurance Cos. by California insurance commissioner Wesley J. Kinder.

The former Nebraska regulator favors a system of pre-audit examinations whereby highly skilled and generously salaried analysts would meticulously explore the annual, quarterly and other reports of an insurance company seeking to establish the existence or non-existence of major trouble spots. Regular examiners would focus their attention on the more routine aspects of the examination procedure.

Under such a system, of course, it would be difficult to imagine a situation such as that now facing the Imperial and Signal Cos. ever occurring. For sophisticated examiners would presumably spot problems long before a company's financial condition deteriorated to the point that the company should stop renewing or writing new policies.

Surely there is enough talent in the securities industry—securities analysts and whatnot—to provide the nation's insurance regulators with enough financial diagnosticians to prevent another major insurance insolvency from occurring.

It may be time, indeed, as suggested by another former insurance commissioner, Gleeson Payne, for some federal minimum standards in the area of uniformity of insurance regulation. And the insolvency problem, above all others, should be dealt with first.

Cargo issue coming

BECAUSE NEARLY EVERY corporation and organization in the country ships goods or products as part of its operations, risk management efforts applied to cargo risks in the last several years have produced radical changes in the way companies manage risks of cargo damage and liabilities resulting from the shipment of goods.

Until recently, there was minimal risk retention of ocean or inland cargo risks. But this has changed. Insurers and insureds alike are looking to higher deductibles, tougher security measures and layers of insurance protection to solve some of the loss problems besetting the cargo property and liability field. Thus, we determined that the subject of cargo insurance and risk management and deserved a closeup look at the changing exposures and methods being used to control and fund losses.

The November 17 issue of *Business Insurance* will include a spotlight report on cargo risk and insurance management. Among the topics being surveyed for stories are over-the-road transport risks, for motor carriers and shippers; marine cargo risks, on both ocean and inland waterways, and the insurance underwriters and products being used to cover those risks; the methods air freight specialists use to manage their risks, and how the companies shipping by air view cargo risks.

We'll take a look at the kinds of contractual agreements risk managers prefer to use in retaining or transferring their cargo risks.

Ports of entry theft problems will be the subject of an investigation by editors of this magazine, to determine what security measures are being taken by the freight carriers, the airports and ocean ports to stem the growing crime theft problem. Are the measures working?

A major problem for both insurers and insureds that we'll be discussing in the cargo issue is the problem of determining what deductible levels to set for cargo property and liability policies.

Readers who have suggestions or comments about the field of cargo insurance and risk management are invited to share their ideas with Susan Alt, managing editor, 740 N. Rush St., Chicago, Il. 60611 (by late October please).

letters

Letters are welcome. Address letters to the Editor of Business Insurance, 708 Third Ave., New York, N.Y. 10017.

Knowledge and ability

To the Editor: You are to be congratulated for your editorial in your issue of Sept. 8, 1975, on risk managers and their apparent inability to move into other areas of corporate management.

I have always felt that risk management is an excellent training ground for general corporate knowledge.

My sales experience takes me back to a period when many insurance managers, as they were called in those days, were simply purchasing agents. Over the years their professionalism has increased tremendously, supported to a great degree by the Risk and Insurance Management Society.

Considering the progress to date, it is probably just a matter of time before senior corporate management comes to appreciate their knowledge and ability.

Harrison H. Goff

vp, Corporate Relations, Allendale Insurance, Johnston, R.I.

Stable market

To the Editor: We at the Trinity Universal and Security National Insurance Cos. are distressed at the implication presented in the article by Margaret LeRoux in the September 8, 1975 issue of *Business Insurance*. The article titled "New Business Ban Put on Argonaut Insurance by British Authorities" is technically correct. The article implies, however, that our companies contributed heavily to the $87,369,000 net operating loss of the Argonaut Insurance Group.

To the contrary. Although our companies did suffer a slight underwriting loss in 1974, the 1975 issue of the Best's Key Rating Guide recognizes the sound management and financial stability of our companies by assigning us an A+AAAAA rating. We sincerely hope that you will see fit to let your readers know that the Trinity Universal and Security National Insurance Cos. continue to provide a sound, stable market for their agents and policyholders.

John M. Stubbs

vp, The Trinity Cos., Dallas, Tx.

Editor's note: We fail to see any such implication in the story.

Kudos

To the Editor: Congratulations on a very fine Sept. 22 issue.

Robert P. Vivian

vp, Corporate Communications, Crum & Forster Insurance Cos., Morristown, N.J.

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legal brief

Appeals court rules insured covered under company group travel policy

THE UNITED STATES Court of Appeals for the Fifth Circuit has affirmed a $100,000 judgment to a beneficiary of an insured under a group travel insurance policy. The court ruled that the insured's travel to his place of regular employment for the purpose of ascertaining the cause of an inventory shortage discovered that day was not "every day travel to and from work" as used in the policy's exclusions.

E. C. Duffer, III was employed by Temtex Leisure Vehicles Inc. (Temtex) as controller. The American Home Assurance Co. (Home) had issued Temtex a group travel insurance policy covering all of Temtex's officers, managers and sales personnel under age 70 while traveling for the busines of Temtex. However, the policy provided that injuries sustained during the course of every day travel to and from work would not be deemed to be sustained "while on the business of policyholder."

Duffer was killed in an automobile collision at 6 p.m. while traveling from his home to a realtor's office. There he was to pick up a co-employe and then continue on to the Temtex plant to search for missing material discovered in an audit taken that morning. Duffer had gone home to have dinner after completing his usual work day. In order to pick up the co-employe, Duffer had to deviate approximately one mile from the direct route between his home and the plant. Mrs. Duffer was awarded a judgment against Home of $100,000 plus interest and attorney's fees.

On appeal Home's principal assertation was that the travel Duffer was engaged in at the time of his death was "every day travel to and from work" which under the policy was not deemed to be travel while on the business of Temtex.

However, the appellate court believed that, in the context of this policy, this phrase meant travel between Duffer's home and his regular place of employment "for the sole purpose of reaching either destination on days and at hours normally related to his regular hours of employment." The court thought it evident that Duffer's intended travel that particular evening was after his normal business hours. Furthermore, the very purpose for Duffer's returning to the plant to ascertain the cause of an inventory shortage was, in the court's opinion, "scarcely an everyday event." *Duffer* v. *American Home Assurance Co.*, United States Court of Appeals for the Fifth Circuit, May 12, 1975, Kraft, J. (BI/01/S.-$2)

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

"Business risk" exclusion

The United States Court of Appeals for the First Circuit has ruled that a standard liability insurance policy containing a business risk exclusion, except for damages resulting from the "active malfunctioning" of such work, did not provide coverage when an error in design resulted in mere "passive" failure to discharge an intended function.

This suit was brought by the City of Cranston, Rhode Island. The city sought $250,000 damages against Vincent Dimitri, an architect, and Bowerman Brothers Inc. (Bowerman), a construction firm, resulting from the settling of a basement floor of a new police station. Dimitri had designed and prepared plans for the station. At the city's request, Bowerman, by its agent, had reviewed the plans and suggested ways to effect cost savings. Bowerman's suggestions included reducing the thicknes of the basement floor slab and substituting mesh for the steel rods that were to be imbedded in the concrete slab. While Bowerman was paid for the services it rendered in drafting modified plans, it played no part in the actual construction.

At all relevant times Bowerman was insured by Maryland Casualty Company (Maryland) under a standard liability insurance policy containing a "business risk exclusion." However, the exclusion did not apply to damages resulting from "active malfunctioning" of work. The trial court concluded that there was no coverage under the policy.

The appellate court pointed out that the basic intent of the "active malfunctioning" exception was to protect the insured against design errors that cause some positive or "active" harm "deemed extraordinary in the insured's business. . ." The exception was not intended to provide protection against errors resulting in "passive" failure to discharge an intended function regarded as the insured's normal business risk.

The city contended that any physical damage to property other than the insured's work product constituted active malfunctioning. But the court did not agree, concluding that Bowerman's recommended design changes simply failed to achieve their intended purpose of cutting costs consistent with structural

integrity. Consequently, the court held that Bowerman was not covered for the property damage under the policy. *American Employers' Insurance Co.* v. *Maryland Casualty Co.*, United States Court of Appeals for the First Circuit, January 15, 1975, McEntee, J. (BI/02/S.-$2)

Builders' risk policy

Where a builders' risk policy recited that it was a condition of the insurance that the premiums should not be occupied without the consent of the insurer, only an unoccupied building was insured, according to a Michigan appellate court. The court further ruled that where the building was, in fact, occupied at the time of the fire the insurer was not liable whether it had knowledge of, or given consent to, the occupancy.

GMF Corp. (GMF) had purchased property in Kalamazoo. A tavern operated by a lessee, Charles Neale, was located on this property. GMF contracted with Peterson's Building Sales (Peterson) to have the tavern torn down and replaced by a new structure. GMF also entered into a ten year lease with Neale for the new tavern, on which construction was to commence "at such date as building is ready for occupancy."

Peterson purchased a "builders' risk policy" from Zurich Insurance Co. (Zurich) when it began to perform under the contract with GMF. The policy had a rider requiring "that the premises shall not be occupied without obtaining the consent of this company endorsed hereon. . ."

Although certain work remained to be completed, Neale moved his equipment into the new structure and, by April 15, 1969, was prepared to be fully operational. Neale began to operate the new tavern, until a fire on April 18, 1969, resulted in a loss of $19,627.68.

Peterson filed a proof of loss claim and Zurich denied liability on the ground that, at the time of the fire, the building was occupied without the consent of the insurer and therefore no coverage existed. Peterson lost his suit against Zurich in the trial court.

On appeal Peterson contended that Zurich failed to prove that the occupancy by Neale was with GMF's or Peterson's knowledge and consent. However, the appellate court pointed out that courts "will not make a new contract of insurance for parties under the guise of construing the contract."

In addition, the court believed that this policy was "clear, concise and unambiguous" in providing that only an unoccupied building was covered. "An insurance company may limit the risk it assumes and fix the premium accordingly," the court emphasized. Consequently, the court held that Zurich was not liable under the policy. *Peterson* v. *Zurich Insurance Co.*, Court of Appeals of Michigan, Division 3, January 7, 1975, Carland, J. 225 N.W.2d 776 (BI/03/S.-$2)

Workmen's compensation

In a case of first impression in Pennsylvania, the state's supreme court ruled that workmen's compensation benefits could be awarded for a partial loss of hearing suffered by an employe as a result of his protracted exposure to a high noise level at his place of employment caused by the operation of heavy machinery. Although the claimant's employment was not marked by any unusual feature, the court concluded nevertheless that he suffered an "accident" within the meaning of the Workmen's Compensation Act.

The court rejected a contention that the employe's failure to indicate that the injury was incurred after any one particular outburst of noise was proof that no accident occurred within the meaning of the act. In essence, the court pointed out that if a hearing loss precipitated by one particular outburst of noise was compensable, it would frustrate the "remedial purposes" behind the workmen's compensation legislation to deny relief to one injured by a series of similar noises, all occurring in the course of his employment, no one of which caused th injury. *Hinkle* v. *H. J. Heinz Co.*, Supreme Court of Pennsylvania, May 19, 1975, Eagen, J. 227 A.2d 907 (BI/04/S.-$2)

Mistaken representations

According to an Oklahoma appellate court, acceptance by the insured of a group medical liability policy without reading it did not preclude reformation of the policy to provide major medical coverage, even though reformation was sought after the loss had occurred. The fact that the "soliciting agent" had no authority to issue the ultimate policy did not render a court powerless to correct a mistake, the court noted.

The court noted that the insured here had no reason to believe that the agents were mistaken as to the nature of the policy he was encouraged to make application for. Neither did he have any reason to know he was not eligible for the insurer's group major medical coverage.

The company expert was present, the court observed, to convince the insured of the merits of his company's policy and to ensure that the insurer's "soliciting agent" made no mistake in presenting the insurer's policy. If the company's expert was also mistaken should the insured be forced to sustain the loss? The court thought not. Consequently, the court concluded that the expert's misrepresentations and actions were binding on the insurer. *Warner* v. *Continental Casualty Co.*, Court of Appeals of Oklahoma, April 1, 1975, released for publication April 24, 1975, Box, J. 534 P.2d 695 (BI/05/S.-$2) ■

(Copies of the entire decisions may be obtained by writing to Business Insurance, *att. Managing Editor, 740 N. Rush St., Chicago, Il. 60511. Please enclose a $2 check made out to Cases Unlimited Inc., for each case, and specify the code number of the opinion.)*

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PERSPECTIVE

Rebuttal of GAS Ltd. critique tells utility need for "mutual" plan

Editor's note: Earlier this year, James H. Bryson, vp of Delaware Valley Underwriting Agency Inc., wrote to this publication and several others questioning the wisdom of some gas utilities in setting up a Bermuda-based mutual insurance company to underwrite property and casualty insurance for the utilities.

Among the questions raised by Mr. Bryson were these: Does it offer the usual advantages of a captive insurer? Is it financially structured to service catastrophy third party liability losses? Is it qualified to meet the long tail and complex obligations inherent in D&O, fiduciary and workers' compensation coverage? Is it advisable to combine in one policy, the protection of the corporation vis a vis the directors, officers, fiduciaries and employes? Do utilities have an insurance market or capacity problem, and if so, will it be solved through the pooling of industry premiums and losses? In setting up an offshore vehicle for liability coverage, is the gas industry escaping regulation to the detriment of potential claimants?

Although the *utility risks underwritten will be reinsured, Mr. Bryson contended there is no guarantee that reinsurance will be able to give this operation a competitive pricing edge as it matures. He referred to "new responsibilities" the utilities have, by virtue of creating this mutual insurer, as well as long term hazards which are "not so apparent and have received so little public discussion." Mr. Bryson cited as a compelling reason for questioning participation in the mutual "the combination of forms being offered."*

In one policy, offered Mr. Bryson critically, GAS Ltd. proposes to combine the exposures of normal third party liability, workers' compensation, D&O liability and fiduciary liability protection. "The liability exposures of the corporation are so completely diverse from the errors and omissions, wrongful act exposures of the directors and officers and fiduciaries that there can be no reasonable case made for commingling these coverages within one policy and one limit of liability. While the corporation may set requirements for self-assumption of loss, financial stability of carriers, it is out of character in applying its own standards (or comprising them) with regard to the protection of individual directors, officers or fiduciaries. Should the needs of employes claiming workers' compensation benefits be entangled with conflicting interests of a captive insurer where the employer has a vested interest?" asked Mr. Bryson. He doesn't believe these two areas should be mixed.

He questioned the advantage of pooling liability risks in this utility mutual, raising the possibility that adverse selection will occur as utilities needing a pricing advantage will participate while utilities with low premiums will hold back.

Capacity and flexibility were not valid reasons for setting up the mutual, Mr. Bryson believed, adding that in his opinion no insurers in this field "appear to be making excessive profit."

Mr. Bryson *wondered how long GAS Ltd. would be able to avoid regulation, even though it is offshore, because it is a creation of companies in a highly-regulated industry. "Will it be able to service its policy obligations if it is not properly licensed? Does this operation create any conflict with the Public Utilities Holding Company Act of 1935?" he asked.*

A. Gordon Hanau, manager of the insurance department for Consolidated Natural Gas Co. System, based in Pittsburgh, responded point by point to Mr. Bryson's questions and criticisms of GAS Ltd. Mr. Hanau was instrumental in the establishment of GAS Ltd., and is on the mutual's board of directors. He is a past chairman of the American Gas Assn.'s insurance committee. The association sponsored the formation of GAS Ltd.

By A. GORDON HANAU

CONCEPTUALLY, Mr. Bryson seems to ignore the premise that there may be some shortcomings in the insurance product and risk management services made available to the gas industry by the insurance community. Certainly no analysis and conclusions are offered on the subject of "why start an insurance company."

In our view there would only be two reasons: One is the need for a new gas industry profit center; the other is a need for greater security. It apparently hasn't occurred to Mr. Bryson to assume that the need for improved risk management and greater security may have caused the industry's entry into the insurance business. And his concern does not reflect any consideration of the proposition that the need for new risk management tools to better implement security of assets and continuity of service may not always be compatible with the commercial insurance community's goals. The bland assertion that he ". . . does not see a problem with now-available insurers . . . none appears to be making excessive profits in the field . . ." pinpoints the difference in our two points of view and Mr. Bryson's limited perspective of the energy business and its needs. Understandably, his comments are motivated by a threatened loss of business for himself and his markets.

On the other hand, GAS Ltd.'s concern about profits is limited to achieving and maintaining earnings only at such a level as to prudently protect its viability as a security instrument.

A measure of the magnitude of change in gas industry problems, in terms familiar to Mr. Bryson, is reflected in two significant figures: (1) single facility costs (insurable values) have increased from a maximum level of $20-30 million (large gas transmission station or a hydrocarbon extraction plant) to the $200-800 million single facility level (LNG, SNG and proposed coal gasification plants); (2) public/-third party liability exposures (liability for bodily injury, plant damage and business interruption) at large industrial complexes and tanker terminals in the $150-$300 million range.

A fundamental aspect of catastrophe risk-management business becomes more clearly visible as these tremendous concentrations of industrial value (physical plant, people and production potential) become more prevalent and, in the energy business unavoidable at this time. This is the increasingly difficult question of whether or not an earnings-first motivated American commercial insurance market is really the keystone upon which industry should depend for its protection against catastrophe loss in the $50-100-500 million range.

Admittedly, the probability factor is low; but it is just this aspect that produces the dilemma. Insurance companies operating without benefit of application of the law of large numbers lose the broad base of volume (cash flow) and predictability. Actuarial predictibility produces a rate based upon a proven income and earnings formula. Random rate formations (judgement rating) is one alternative when the base is skimpy and the law of large numbers is inoperable. The other alternative is to severely limit coverage and capacity for the relatively few jumbo risks and their low numbered, and therefore random losses.

At this point the risk manager must have alternatives available to him.

Increasingly; we will see industry look to its own devices for the solution to these problems. This is not going to seriously affect the insurance business in terms of total income and earnings impact. It could, however, seriously affect some producers. Adjustments will be made when these things happen, witness the competitive effects of OIL and GAS Ltd. Non-member petroleum and gas companies have reaped substantial benefits from their commercial insurers simply due to the existence of these security oriented industry owned insurance companies and their obviously insured-oriented coverages.

If the commercial insurance markets are to be a dependable part of the risk management of the jumbo industrial risks that, admittedly, are difficult to rate, then they must consider some radical changes in the management philosophy, all of which fly in the face of the total management control, cash flow, performance motivated philosophy. Some of these considerations are:

1) Stop the schizophrenic double-talk and cyclical capacity gyrations. While the 3-4 year feast-or-famine capacity availability fluctuations make good sense from an earnings standpoint, the accompanying effect is to seriously jeopardize the security that insurance is supposed to provide. Increasingly serious gaps in industrial risk management plans are the result of this "now I'm an industrial insurer" and "now I'm not" performance by the American insurance companies; either sell it on a dependable basis or don't sell it at all.

2) The basic consideration in (1) above is risk—presumably the business of insurers. Commercial insurance companies should decide whether the catastrophe loss business is for them or whether there is a better use for their capital. I suspect that there is a better use for any income and earnings motivated business than accumulating a high-liquidity, multi-hundred million dollar fund available to gamble on super-accidents.

The point is, that risks found by the commercial insurance markets to be unprofitable and therefore are not written don't just go away; they are still risks that must be managed by industry. When industry cannot get the product or service it needs from the traditional commercial sources of supply then it must, if the situation is acute enough, adapt. One of the ways it adapts is to look at some fundamentals and learn to help itself. The formation of its own insurance company is one of these adaptations.

To start, and hopefully allay the fears of those whose concern for our misguided approach may motivate them to take up pen and throw off verbal sparks, I would suggest that a more productive inquiry procedure would be to recognize that the AGA has sponsored a number of in-depth industry surveys and two feasibility studies, one by Ebasco Services Inc., an experienced international utility consultant and another by Booz, Allen, Hamilton Inc., also a world renowned consulting firm. Their recommendations were considered and acted upon by risk and insurance experts whose cumulative experience totals more than 100 years. After obtaining opinions from a respected law firm, the decision was taken to form the new insurance company. While we don't claim to have all the answers, careful and thorough studies have been made, resulting in the start of an enterprise that, like all ventures entail some acceptable degree of risk but with promise of great success as an industry owned service.

I think the first question one must ask in a broad based analysis of GAS Ltd.'s organization is "why are many members of the American Gas Assn., a 300-plus investor owned gas and electric company membership, along with approximately 1,200 municipally owned utilities showing interest in an industry insurance company at all?" Certainly it is not to create an industry profit center. As postulated earlier in this article, there are better investment opportunities, and Mr. Bryson himself has raised the spectre of the Public Utility Holding Company Act prohibitions.

Though Mr. Bryson seems unaware of this, the Public Utility Holding Company Act applies to only a relative few. It was enacted to regulate what today are mainly the few large utility holding-company owned systems in the United States. Its regulations do not apply to the hundreds of small, medium and many large utility operating companies. In the absence of anything other than Mr. Bryson's throw-away Public Utility Holding Company Act comment, it is difficult to follow his thought. The only prohibition under the act that might seem to be an inhibiting element in a public utility holding company or its subsidiary's relationship with an insurance company would be found under the section which states that:

"It shall be unlawful . . . for any registered holding company or any subsidiary company thereof, by use of the mails or any means of instrumentality of interstate commerce, or otherwise, to acquire, directly or indirectly, any securities or utility assets or any other interest in any business. . . ."

However, this prohibition is not applicable to the Public Utility Holding Company—GAS Ltd. situation, inasmuch as there are no securities (stocks, bonds, etc.) purchased by any member insured in GAS Ltd. If, in any way, the law can be interpreted to show that a utility holding company's participation as an insured member of this mutual violates the law, then many of the gas industry's property and casualty insurance programs and most of the insured benefit programs underwritten by the commercial insurance market today are in jeopardy. To even entertain such a possibility is, of course, ridiculous.

With a relative few exceptions found in the transmission and production rather than utility side of the gas business, gas company managements today are not devoting their time to the formation of an industry insurance company in order to make some relatively insignificant profits. At a time when energy problems make more demands than ever before on executive time, this time devoted to the formation of an industry service is given because of need.

The concept for GAS Ltd. grew out of the '69-'70 "capacity crunch" and careful analysis and implementation has resulted. The executives involved in the inquiry and implementation stages of GAS Ltd. are also experienced and prudent enough in their judgments to realize that while these feasibility studies made by consultants with impressive credentials are a most hopeful and best available means of making analysis and reaching conclusions, that there is a risk—as there is in any business venture; that all will not be predictible or perfect; and that our new enterprise may, and at times probably will, suffer setbacks.

We also strongly feel that GAS Ltd. can continue to convince the gas industry that

Continued on following page

GAS Ltd....

Continued from preceding page
it exists to improve the management of unbudgetable risks; that it is primarily "gas-industry security" oriented and not just a "cash-flow profit center;" that its under 10 cents of premium dollar administrative and acquisition cost level as compared with 30 cents to 40 cents in commercial property and casualty insurance companies makes it possible for GAS Ltd. to write selected risk at considerable savings; and, most of all, that this insurance company will not evaporate in the thin air of the net-lines reduction crisis each time that earnings are depressed or there is a general economic pressure.

GAS Ltd. will, of course, be affected by loss experience and the general economic trends; but GAS Ltd. will always be in the marketplace for the primary purpose of insuring gas industry risks or it will discontinue doing business. No commercial insurance company in the world makes that representation, much less lives up to it.

More specifically with respect to Mr. Bryson's questions, let me attempt to answer them in the order they appear in his article:

Does it offer the usual advantages of a captive insurer?

This is difficult to answer for several reasons. The first of which is that we do not consider GAS Ltd. to be a "captive insurer" in the usual sense of the word. Mr. Bryson should know that captive insurance companies formed by corporations are formed for a variety of reasons, not always primarily having to do with insurance. We would prefer that GAS Ltd. be referred to as industry mutual insurance company rather than a captive.

While this question can become an exercise in semantics, we can only point to the formation of the Factory Mutual Companies originally as a similar effort in the sense that they originally restricted their membership to the knitting mills of New England. If this was an "industry captive," then we suppose GAS Ltd. could be referred to as being one. GAS Ltd. is structured to offer a more stable and constant insurance program to the gas industry. We think this can be done at a lower cost. If these elements qualify under Mr. Bryson's definition of "usual advantages" then it will please GAS Ltd. to do so. On the other hand, GAS Ltd. will not offer a tax shelter or a dummy insurance fund, these being the purpose of and, for some, captive insurance company advantages.

Is it financially structured to service catastrophe third party liability losses?

Unless one assumes the task groups that worked on this matter and the two renowned organizations that did the feasibility studies are incompetent, then one must assume that if this insurance company was formed to write third-party liability business, it anticipated the probability of paying third-party "catastrophe" losses. Of course, "catastrophe" is a relative term. GAS Ltd. has organized itself to start business by writing the first $1 million excess of a minimum retention of $100,000 any one occurrence. This $1 million net line stops catastrophe loss at a reasonable level. Most gas companies, along with other utilities, manufacturers and transportation companies, buy excess liability limits ranging from $25 million up to over $200 million.

Is it qualified to meet the long-tail and complex obligations inherent in D&O, fiduciary and workers' compensation coverages?

GAS Ltd. will be organized and qualified to meet any so-called "long-tail" obligations inherent in any liability that it has written, be it directors' and officers' liability, fiduciary liability, or workers' compensation liability. If it offers any assistance in analyzing this question, many of the utility companies in the United States have, for many years, been self-insurers of workers' compensation and are quite familiar with the requirements of dealing with long-tail liability losses.

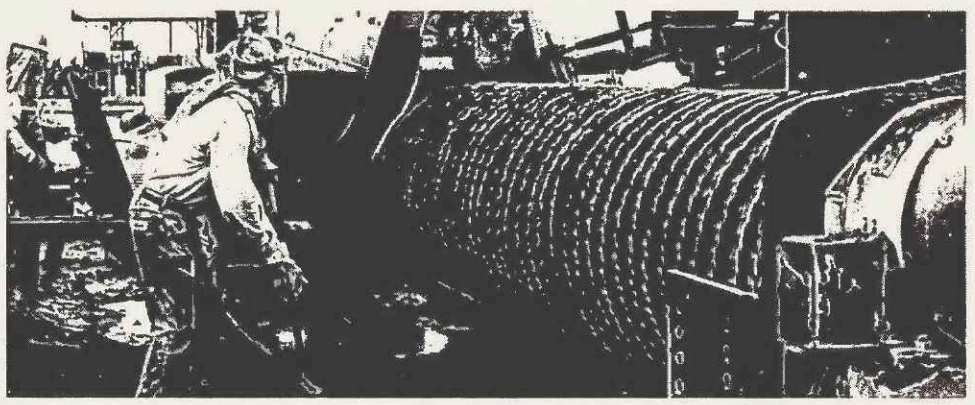
In addition, within the framework of their directors and officers indemnification by-laws, many have long "self-insured" their directors', officers', and employe indemnification liability as established in corporate bylaws and statutes. Fiduciary liability will not present any more difficult problems for most utilities than those they have been managing for years.

Is it advisable to combine in one policy the protection of the corporation vis a vis the directors', officers', fiduciaries, and employes?

Is it advisable in what sense? Mr. Bryson is not specific. We will answer it by saying that the combination of coverages mentioned (except the new fiduciary liability) have been packaged for years in the utility business with no adverse results. In reading between the lines, conflict of interest or even manipulation seem to be inferred. In this respect we think the statutes dealing with workers' compensation and fiduciary liability are most explicit and offer no realistic opportunity to be manipulated. Directors' and officers' liability coverage, with its personal indemnification policy does not seem to offer an opportunity for either conflict of interest or manipulation with respect to insurance judgments concerning the policy. GAS Ltd. recognizes the mechanical problems to be managed in a combination policy of this kind but anticipates no difficulty in this regard.

Do utilities have an insurance market or capacity problem and, if so, will it be solved through the pooling of industry premiums and losses?

The gas industry definitely has an insurance market and capacity problem; it was just this problem that initiated and continued to motivate the feasibility studies to the conclusion which was the formation of an industry insurance company. Many executives in and out of the insurance and utility business would be startled to see the evidence reflecting the unwillingness of many commercial insurance markets to write the gas utilities' business on even a selective basis.



Section of pipe for the Stingray pipeline, which will tap natural gas offshore Louisana.

While there are many others, the classic example of this non-participation has its headquarters right in Mr. Bryson's hometown. The Insurance Co. of North America, a major property and casualty underwriting force, has stated flatly to major brokers that it write no gas utility business. As to whether or not GAS Ltd. will be the total solution of the gas industry insurance shortages remains to be seen. We suspect not; but we do hope that it will eventually have a major impact in furnishing the gas industry with a risk vehicle that will influence and augment the commercial insurance markets in a substantial way.

Is the gas industry escaping regulation to the detriment of potential claimants?

Approximately $25,000 has been spent specifically with respect to the legal studies, opinions and analysis of the statutes governing the regulation of insurance in the several states and Bermuda as they would affect GAS Ltd. and its insureds. And while we are quite familiar with the basis for Mr. Bryson's question, no gas company claimant will be handicapped because of lack of jurisdiction in any state.

Remember, GAS Ltd. is not in the insurance business primarily for profit. We are in business to provide greater security for the gas industry and return to it as much of the surplus and administrative overhead economies as possible. It simply is not in the spirit of our organization and projected plans to avoid litigation by any of our claimants. We would not last long in the security business if we did.

Pragmatically speaking; through the gas-industry dominated board of directors, the insured participants will have a management far better informed on and sympathetic to its employes and corporate security problems than has ever been the case in a commercial insurance company, state regulated or unregulated.

Mr. Bryson makes the observation that the participating companies will be responsible for the success or failure of this new insurance company as a business enterprise. He is correct. We have every indication that it will be a successful business enterprise, security oriented rather than profit oriented. He also makes reference to the fact that the participants are involved in the offering of "policies of the type which have been proposed" (sic). If this obtuse comment refers to the propriety of combining several types of liability coverage, i.e., the errors and omissions type coverages and the bodily injury and property damage type coverages, then our only comment is that commercial markets could have reduced operating overhead by doing this long ago; the savings in large business insurance would have been worthwhile, vastly outweighing any administrative compartmentalization.

Mr. Bryson observes that "insureds must ask if the policy they get creates sufficient advantage both in the long and short run, to offset the "pitfalls." As previously stated, we see no pitfalls. The dilemma and GAS Ltd.'s intended solution is that the gas industry's choices are already so severely limited in the commercial markets that the element of a choice range is a luxury, not a normal option in the purchase and maintenance of insurance in our industry. In the fourth paragraph Mr. Bryson creates a straw man and then in some confusion of words, tortuously appears to rationalize that GAS Ltd. should not make the same mistakes made by the commercial insurers in their reinsurance transactions. If this is his meaning then again he is right. As was often said in describing the plight of the reinsurance market after Hurricane Betsy and a series of other major insurance catastrophes in the 1960s, "they leaned on too slender a seed." All of this conjecture to no particular purpose however.

This is a most important observation by Mr. Bryson dealing with one of the basic aspects of insurance, that is, the question of reinsurance. Mr. Bryson could easily have ascertained that GAS Ltd. does not reinsure its $1 million net line. The only trouble with Mr. Bryson's statement is that it is 100% wrong; it is one of those items in his article that could very easily have been checked before placing it and himself out on a limb.

Everyone concerned with GAS Ltd. has been informed that the $1 million of liability it writes is a net line; it is wholly retained for the account of GAS Ltd.; it is not reinsured. The last sentence in this paragraph reads "recent events involving utility insurance, prove all too clearly that front line insurance cost is dramatically affected by the behavior of reinsurers." While not clear, this seems to contradict Mr. Bryson's observations elsewhere that he is not aware that gas companies have had any particular problems in obtaining insurance.

Mr. Bryson emphasizes that the formation and participation in GAS Ltd. creates "responsibilities which cannot be deserted in spite of what the by-laws say." This remark sounds like a red-herring and we can only ask Mr. Bryson to be more specific. The directors and officers of GAS Ltd. are fully aware of their responsibilities and those of the company in conducting an insurance business as it has been organized and structured. If Mr. Bryson is saying that anyone purchasing insurance from GAS Ltd. in some way becomes involved or becomes liable to a degree greater than that stated in the by-laws and under the policy provisions, he simply doesn't know what he is talking about. An insured has no more "responsibilities" in GAS Ltd. than he would have being insured with the Atlantic Mutual, Mutual of Omaha, or any other non-assessable, non-lock-in mutual. This is an irresponsible comment on responsibilities.

Mr. Bryson goes on to question, in a continuing series of generalities, the propriety of covering a number of different types of liability under one policy. As previously stated, this has been done for many years in a variety of ways, including directors' and officers' liability, workers' compensation, other errors and omissions coverage, and bodily injury and property damage liability. If Mr. Bryson is suggesting that because certain standard forms as approved by the state or designed by commercial companies and other markets do not write the several classes of liability in this manner, then again we recommend that it is long overdue.

The compartmentalization of classes of business within an insurance company and the issuance of separate policies for these coverages by the same company amounts to the same thing at a much higher operating cost. Where adequate premium is charged, conservative reserves established and prudent underwriting philosophy followed, there have been no problems. Then, too, it is not as if the gas industry had not had a long and varied experience in handling losses of almost every description, both insured and uninsured.

We rely on this experience to guide us in managing GAS Ltd. for the benefit of the gas industry.

In this same section concerned with responsibility, Mr. Bryson concerns himself with whether or not the "needs of employes claiming workers' compensation benefits be entangled with the conflicting interests of a captive insurer where the employer has a vested interest." Mr. Bryson goes on to say that he does not believe this combination should be made. In this statement, if we understand Mr. Bryson, it seems that the question is posed in terms of a management having an option or choice and exercising a conflicting interest. As we stated earlier, this seems to ignore the fact that workers' compensation benefits are a matter of statutory liability and must be paid by an employer whether the insurer can respond or not. The employer's "vested interest" in the insurance company in this instance is no different from its "vested interest" in any commercial insurance company. Again, Mr. Bryson's insinuations seem to infer more than the words.

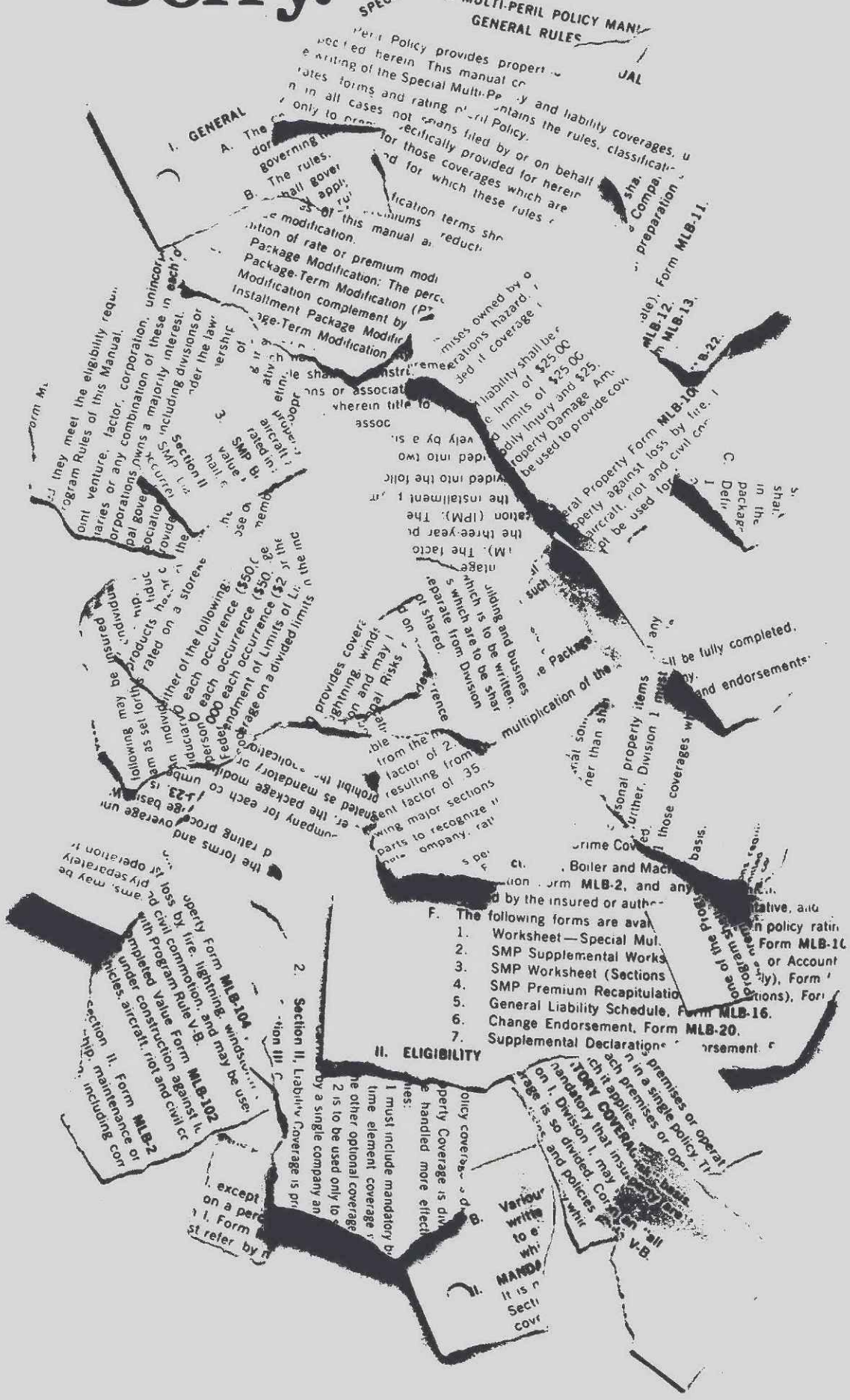
Mr. Bryson's observations that "some major insurers have selectively written policies with mixed exposures, but it is dangerous to do so in a vehicle where there exists a clear conflict of interest, no apparent accountability to regulatory authorities and no traditionally acceptable financial structure." Irony of ironies: a risk management organization being told by an insurance broker that there exists a "clear conflict of interest"! (again without any specificity). This prompts two responses. They are:

1) Be specific; in what way is there a conflict of interest? Give examples. We have formed a company, emphasizing our purpose is above all, to be an instrument of industry security. We sincerely want to know if there are potential conflicts of interest that would be injurious to our insureds. Neither of our consultants nor our well known law firm has seen this problem. If others do we would consider it a favor to be specifically advised as to how conflicts may exist.

2) To paraphrase an old admonition: "Broker, heal thyself."

GAS Ltd. has formed a conservative insurance operation with "stopped losses" at $1 million each occurrence. As indicated by our long term industry experience surveys, we believe this is a prudent base, combining gas industry instincts with what was recommended by our two consultants. We disagree that it is "dangerous to do so." Again, I think Mr. Bryson must ask himself why so much of the gas industry's time has been devoted to the formation of this vehicle, as he calls it. Certainly not to alienate the gas industry and those companies that may be potential clients. Mr. Bryson must know, too, that the utility business can ill-afford to alienate any state or federal regulating agencies. ■

To the fellows who wrote the book on multi-peril coverage. Sorry.



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Florida Blues denied rate increase due to 'cost inefficiencies'

TALLAHASSEE—Blue Cross and Blue Shield of Florida were denied a rate increase amounting to more than $10 million a year by state insurance commissioner Phil Ashler, who charged the non-profit carriers with cost inefficiencies.

Commissioner Ashler pointed out that Blue Cross and Blue Shield have not acted "effectively to help curb health care costs in spite of their economic power in the field," which he estimated to be 40% of the market.

A. David Mancini, a spokesman for the Blues here took issue with that figure, saying that 24% of the market was "a more accurate estimate unless Medicare benefit administration were counted and then it would be a lot more."

The insurance department charged the Blues with being "a conduit for the convenience of hospitals and physicians in securing payment for their services" in the state and chided them for not effectively pursuing ideas for cost containment being practiced or studied in other states such as "preadmission testing, second medical opinions for elective surgery, prospective hospital payment, uniform reporting system of hospital costs, and audited hospital statements."

Mr. Mancini countered this statement by saying the Florida Blues do not believe they can "remain competitive in the market and regulate hospitals at the same time." He said he believes cost control is a "job for federal regulators."

Furthermore, he continued, preadmission testing and audited statements have been incorporated into practice, Mr. Mancini continued.

"We're disappointed in the commissioner's denial," he said. "Our losses are running about $1 million monthly and these particular contracts have not had a rate increase for 3½ years—a period of unusually high inflation."

Mr. Mancini went on to say he thinks "it's unfair to compare Florida plans, which cover 24% of the people, to other states where there is more concentration of subscriptions—up to 80%," he estimates. "Hospitals in those states listen more if they're getting a substantial share of the business from Blue Cross/Blue Shield. I seriously doubt whether Blue Cross of Florida can affect health care costs.

"Besides that, there are more firms offering health insurance in Florida than in most other states," Mr. Mancini claimed.

An October board of directors meeting for the Florida Blues will study various options open since the rate denial, he added.

One of Commissioner Ashler's charges was that Blue Cross and Blue Shield failed to submit information about investment income earned on subscribers' reserves "and the application of such earnings in their formulation of proposed rates."

"They never asked for the investment information," Mr. Mancini insisted.

The document charged the Blues with an "unexplained" 3% variance between the two organizations' operating costs, 9.5% for Blue Cross and 12.5% for Blue Shield.

Mr. Mancini countered by saying the "operating expenses were approved by the insurance department. Blue Cross' administrative costs are lower because Blue Shield processes more actual claims with doctors than Blue Cross does with hospitals." ■

Canadians to study private pension plans

TORONTO—The Canadian federal government will conduct a comprehensive study on private pension plans, according to Marc Lalonde, minister of national health and welfare.

The study, which will take place over the next year, will examine the design features of plans, particularly in relation to their portability and vesting requirements.

Mr. Lalonde said at a conference here in September that the study would be conducted by his department and by the department of finance. At the same conference, entitled "Pensions in Crisis," John Seltzer, president of GBB Associates Ltd., Toronto, said there may be some important changes made in the rules governing the tax deductibility of contributions to private Canadian plans.

Contributions made to plans that provide increased pension payouts based on a cost-of-living factor will be tax deductible, apparently. Now such contributions may not be made while a worker is employed, even on a non tax-deductible basis.

The Financial Post newspaper here, which sponsored the conference, reported that the Canadian federal department of insurance has worked out a formula for pre-funding of pension benefits tied to inflation.

Mr. Lalonde said he will act on a recommendation of the Canada Pension Plan Advisory Committee to open discussions with the provinces on establishing a new interest rate mechanism for CPP investments, to help avoid eventual benefits reduction.

Most CPP funds are invested in provincial government securities with low interest rates. While this feature resulted in reduced cost of government to the provinces, it has also meant that citizens of the provinces participating in the CPP have been deprived of several hundred million dollars. This could mean a reduction in benefits eventually or an increase in contributions in a similar amount. ■

Major sources of cargo losses are water damage, packaging & thefts

TOKYO—The number of unsound intermodal cargo containers is increasing, possibly due to the economic recession-caused deferral of maintenance, causing an upswing in water damage losses from leaky containers, said the American Institute of Marine Underwriters. (AIMU).

This was one of the areas where losses were reported by the AIMU to be increasing, disclosed in a report made to the cargo loss prevention committee of the International Union of Marine Insurance being held here.

Ship and cargo sweat damage, wetting, and inadequate stowage problems are continuing, but handling damage and losses are becoming less frequent when cargo is handled in containers sent straight through to foreign destinations door-to-door than when handled in traditional break-bulk operations, the report showed.

Cargo damage from faulty hatch covers is also continuing to cause major underwriting losses, said the AIMU report. "The use of a plasticized marine tape as a hatch cover sealant appears to be effective in minimizing leakage. However, the use of this tape must be recognized as only an intermediate loss prevention measure," according to the cargo report.

Use of plastic covers and shrink-wrap for consolidated and unit-packaged cargo loads is increasing, the report pointed out. "A new development in this area features a stretch film applied horizontally around loads to immobilize them on pallets," the AIMU said, noting there is not enough experience with this loss prevention measure yet to establish its effectiveness in reducing losses.

Garments shipped in containers were found damaged on arrival when garments were hung on plastic hangers and covered with plastic apparel bags, because while the bags prevented soilage they trapped moisture and caused growth of mold on garments, the committee was told.

Pilferage, theft and hijackings continue to be the major source of inland marine cargo losses. "Many underwriters commented on the growing evidence of employe infidelity or their collusion with criminal elements," the report said. Increased vigilance in the New York area has reduced hijacking losses, the AIMU added, but at the same time there has been an increase in the incidence of hold-ups and hijackings in the Boston area. "During this past year, there have been a number of terminal takeovers by thieves in the industrial belt surrounding Boston."

Truck top markings have helped identify and recover stolen vehicles, the AIMU said.

"The Securities and Exchange Commission has kept a close watch on sales, storage and transit of (gold) bullion, particularly when it is being held in trust by a custodian," said the report, noting that legalized gold sales in the U.S. spurred domestic trade of precious metals. "Insurance coverages, storage facilities and handling requirements all have been under close scrutiny by the SEC," the committee was told.

But the report pointed out an "apparent loophole" in the security surrounding transport of precious metals "at inter-line transfer points in receipting for high-value air cargo shipments." Present regulations don't require specific identification of shipments on documents effecting transfer from one airline to another. The AIMU said formal recommendations have been submitted to eliminate this security hazard.

Claims for currency losses appear to have increased in the last 12 months, without any particular pattern as to frequency, said the report. "As a countermeasure, assureds are frequently required to ship only by armored carrier to and from the airports in question, and to ship via airfreight with full value declared instead of via registered mail," the AIMU report stated. ■

Identification problem area for air cargo

TOKYO—A major problem plaguing air cargo insurers is improper or incomplete identification of cargo package contents on original shipping documents, which results in inability or failure to promptly trace lost cargo.

This disclosure was made at the International Union of Marine Insurance held here in late September, as part of a report on cargo loss prevention by the American Institute of Marine Underwriters (AIMU).

"While (air cargo) results are generally favorable, losses as a result of theft and pilferage remain the major source of loss," the report disclosed.

The problem of inadequate description of cargo contents in air shipment documents compounds this problem because it makes tracing shipments very difficult. But resolution of this problem is especially difficult, the AIMU report stated, because "full description on shipping documents increases the risk when the many people who handle documents are fully aware of the contents and value thereof."

In most air centers, steps are being taken to adequately secure terminals, and this is a vast improvement, said the report. But, like other cargo fields, "the largest area of concern remains employe infidelity and possible collusion with organized crime," the report stated.

An area of increased loss has been water damage occuring when cargo is left in unprotected carts, according to the report. ■

Announces awards

Two awards, each with a $500 honorarium, for excellence in publications on insurance were presented by the American Risk and Insurance Assn. The 1975 Elizur Wright Award, given for the "most significant contribution to the literature of insurance," was presented to John L. Long, professor of insurance at Indiana University, for his book *Ethics, Morality and Insurance*. The 1975 Clarence Arthur Kulp Award, given for the "most significant contribution to the development or understanding of private or governmental insurance relating to the economic security of the individual and family," went to George L. Head, director of risk management, American Institute for Property and Liability Insurance.

Outdated charts will increase shipwrecks, marine insurers fear

TOKYO—Marine insurers expect "some very serious groundings (of ships) in waters that previously had been considered safe" because volume of sea traffic is increasing, coupled with use of more deep draft vessels, while navigational charts are dangerously outdated.

This dire prediction came at the International Union of Marine Insurance held here late last month, when a hull loss prevention report was given by the ocean hull committee.

Some surveys of ocean depths are over 100 years old, and are being found very inaccurate, said the committee. "During the summer of 1974 a survey vessle operating in the Straits of Dover with a side scan sonar had located 50 wrecks, the existence of which were unknown. This is an area where 300 ships pass each day, including VLCCs," said the report. Where revision surveys are made with modern sensors, hitherto unsuspected rock pinnacles or wrecks have been disclosed with alarming frequency, it was disclosed.

These findings are particularly alarming because tankers presently plying the seas commonly draw over 90 feet of water, and new mammoth vessels under construction will draw over 100 feet.

Vessels drawing more water also reduce the channels of safe navigation and, coupled with congestion in many heavily travelled routes, increase the need for better traffic control, the report urged.

The committee pointed out that the new ore carrier Igara, which weighs 72,741 deadweight tons fully loaded, draws 53 feet of water, and went aground when passing Mendarik Island in poorly charted waters, where lead and line soundings taken five miles apart back in the 1800s were used. "This incident cost underwriters in excess of $25 million," the report said.

When the Showa Maru grounded in the Malacca Strait in January of this year, attention was focused on that 500 mile long channel, one of the world's busiest and most important. It accomodates up to 5,000 ships a month, including supertankers, oil drilling rigs in tow, freighters, container ships and passenger liners. "The incident of the Showa Maru . . . was only one of many such happenings in this area, which have cost Japanese insurance companies more than $11 million for damages from 19 accidents in the last four years."

This does not include damages on the Showa Maru cleanup costs. The largest payment was $2.6 million when the Terukuni Maru scraped bottom. ■

Urges tighter standards for cotton stocks

TOKYO—The American Institute of Marine Underwriters (AIMU) called for more stringent international standards for storage of cotton at ports and in warehouses to prevent fires, which have been occurring with greater frequency.

In a report on cotton risks delivered to the International Union of Marine Insurance, John E. Greene said that even in the U.S., where the tightest safety standards exist, "catastrophic losses have occurred with amazing frequency over the past few years."

Although sprinklers and rigid storage standards for warehouses and other areas are being used in some ports, "no easy way has been developed to control cotton fires." The port of Galveston, Tx. alone has been the site of four major fires in the last three years, Mr. Greene said, each one approaching or exceeding $1 million.

"Uniform cotton storage practices and adequate fire prevention equipment are absolute necessities," the report said. While some countries in the western hemishere have some form of cotton storage standards, others have none, the report explained. ■

OSHA wins back pay for suspension

WASHINGTON—A Denver, Co., worker will receive restitution for wages lost when he was suspended by his employer for reporting job safety and health law violations, the Occupational Safety and Health Administration (OSHA) revealed.

The wage repayment was part of a settlement negotiated between OSHA and CF&I Engineers Inc. stemming from a discrimination complaint filed by John J. Glynn, an employe of the company and a machinists' union official.

Mr. Glynn said he was suspended by the company after he identified himself as the complainant on the job safety and health violation. An inspection by the Colorado Occupational Safety and Health authorities led to corrective actions by the company.

OSHA can investigate and take to court any case involving alleged discrimination or discharge action taken against employes for exercising their rights under the federal job safety and health law.

In addition to the wage repayment, the company also agreed to remove from its personnel records any reference to Mr. Glynn's suspension. ■

ERISA prompts call for Teamster pension probe

WASHINGTON—An investigation that could expose trustees and officials of the $1.4 billion dollar Teamsters Central States pension fund to major liability suits has been called for by Sen. Jacob K. Javits (R-N.Y.).

Sen. Javits said federal officials, armed with new authority under the pension reform law, should move quickly to "clear the air" about alleged fiduciary abuses in the huge, Chicago-based pension fund.

Government officials have privately cited staff shortages, particularly in the Labor Department, as holding up action on the Teamsters fund. Sen. Javits said any such shortages should immediately be brought to the attention of Congress.

"It is no secret that one of the primary reasons for enacting federal fiduciary standards was to provide a more adequate basis for dealing with the long history of abuses in the Central States fund," Sen. Javits told an audience of multiemployer pension fund officials in Washington last month.

He emphasized that the "success or failure of the new fiduciary standards will turn on what is done about the Central States fund."

Teamsters union president Frank Fitzsimmons, who also heads the Central States fund, told *Business Insurance* that there was "nothing to hide" about the fund's operations. He said the fund would cooperate with any federal investigation.

It was not known if the fund has purchased fiduciary insurance for itself or its trustees in view of the high probability of some kind of federal investigation into the fund's investments.

The Labor Department's $16.3 million budget request for pension reform duties in the year ending next June 30 has been bogged down in the Senate.

While the Labor Department budget itself is not normally a controversial item, it is customarily combined for Congressional action with the budget of the Health, Education and Welfare Department. The HEW budget is currently under fire by critics of federal inspired school desegregation plans.

James Hutchinson, administrator of the Labor Department pension reform agency, the Office of Employe Benefits Security, has indicated he will seek additional funding for his operations in a supplemental budget request to be filed with Congress later this year.

Mr. Hutchinson, however, has declined to say if the additional funds would help fund an investigation of the Central States pension fund. ■

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Tells of refusals to renew product liability policies after claim filings

CHICAGO—Product liability insurers are increasingly refusing to renew policies under which claims have been filed or incidents reported which might lead to claims, the author of a new book on products liability told *Business Insurance*.

Irwin Gray, a PhD and professional engineer who teaches and does consulting work in the area of products liability, said he has not heard of insurers fighting claims harder or denying more claims by insureds. But "there is more denial of renewals on policies after incidents," he noted.

Despite the increasing amount of news about jury awards in products cases amounting to more than $1 million per case, Mr. Gray believes many if not most of those awards are reduced substantially by appeals court judges.

"Every so often" there's a million-dollar award that holds up, he added. But he estimates the average of the top type of common award which will be upheld through appeal is about $400,000. And there are perhaps "100 of these for every one million-dollar award," said Mr. Gray. He qualified the statement, however, and said that does not include pharmaceuticals and drugs, which are "in a class by themselves."

Charles H. Martin, co-author of the book with Mr. Gray, said that the insurance industry's response to claims by insureds "depends on whether they're dealing with a consumer products oriented client or with an industrial client. In the area of consumer product liability claims, the insurance industry as a whole is softening up their resistance to claims because of the development of the consumer movement." Mr. Martin believes insurers aren't fighting so hard against claims because plaintiffs are learning how to successfully prosecute these cases.

"The insurers are learning that their insureds are, indeed, at fault. Now they're trying for the first time to get their insureds to do a better job of product liability control," said Mr. Martin, who for 21 years was a risk manager for American Cyanamid, and has been consulting since 1963.

In the case of industrial clients, insurers haven't changed their stance on claims or defense, said Mr. Martin. "Those claims are larger and fewer, and frequently involve subrogation actions."

Mr. Martin said he believes the "proper" deductible today under a products liability policy is "one that's about equal to the normal claims expected." It is common to see such deductibles as $10,000 in the machinery industry, "and $25,000 to $50,000 deductibles aren't unusual in companies making very large machinery such as turbines and boilers," he added. Deductibles for producers of consumer goods such as toys and foods usually range between $1,000 and $10,000.

The biggest problem in the products liability field is "lawyers," Mr. Martin stated emphatically. He believes no-fault will eventually have to be applied to product cases, "as surely as it is coming in auto areas and will have to come in the medical malpractice field."

Mr. Martin says more captive insurance companies are being set up for the underwriting of products liability risks. "I see a number of present owners of captives moving products liability into the captive either on a primary layer basis, or as reinsurer, or as a participant in one of several other ways." ■

FAA collects airport wind shear data

WASHINGTON—The Federal Aviation Administration (FAA) has announced it is collecting data on low level wind shears at two major airports.

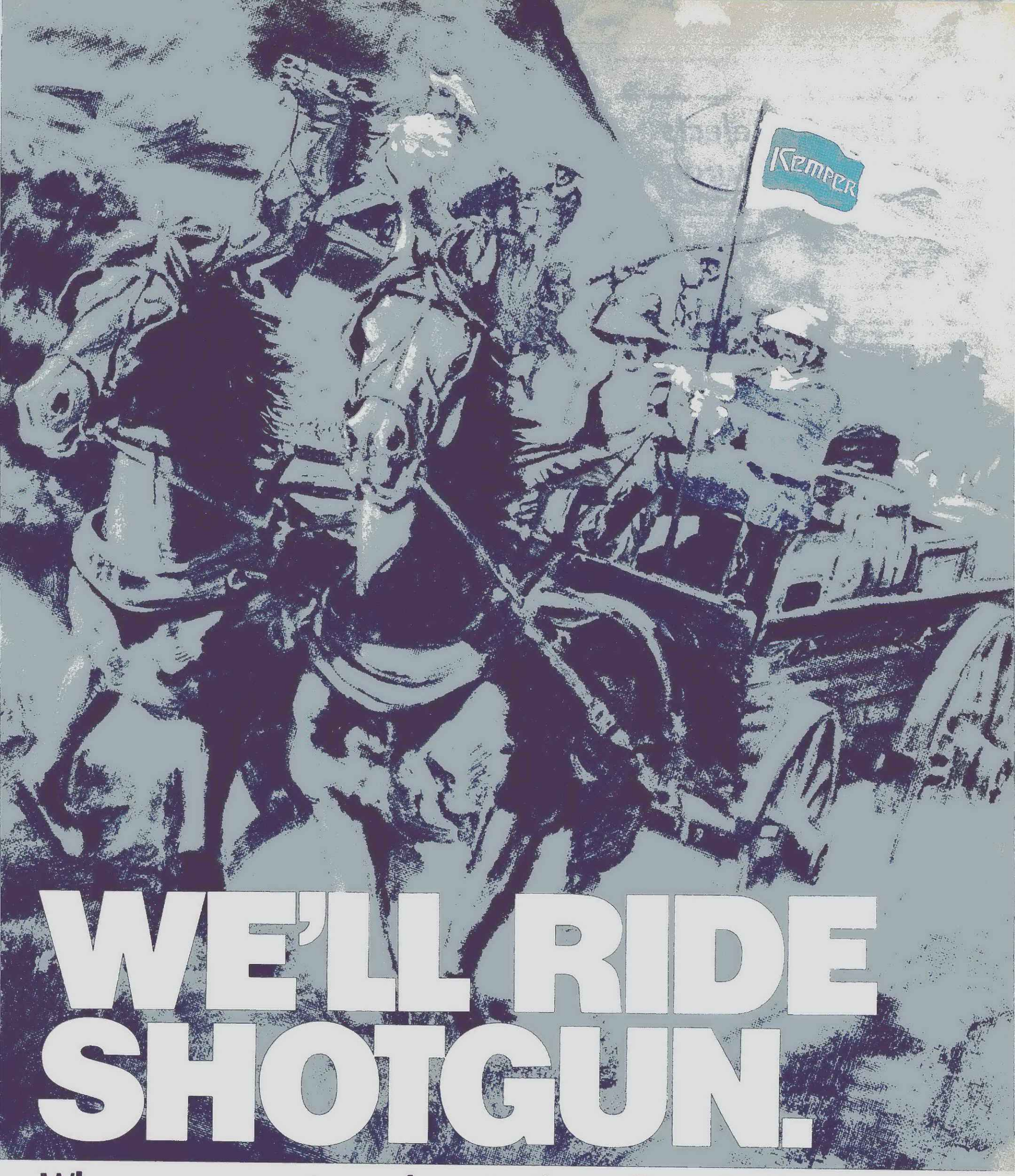
Wind shears, in which wind speed or direction vary significantly with altitude, are believed responsible for the June 24 crash of an Eastern Airlines Boeing 727 at New York's Kennedy International Airport which killed 114 passengers.

United States Aviation Insurance Group carried the primary liability coverage for Eastern. The death toll in that crash was the highest in U.S. commercial aviation history. (*Business Insurance*, July 14.)

The data is being collected at Kennedy Airport and Boston's Logan Airport. The study is expected to lead to the design of automatic wind shear detectors that will be considered for possible operational use, the FAA said.

In another safety related matter, the FAA said it will require commercial airliners to install a new glide slope alert system by June 1, 1976.

The new alert system will be part of the Ground Proximity Warnings System (GPWS) that the FAA had previously ordered installed on commercial airliners. The glide slope system will sound an alarm in the cockpit when an airplane drops below the glide slope radio beam that defines the correct approach angle to the runway. ■



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Mfrs. Hanover elects Haggerty vp-insurance

Manufacturers Hanover Trust Co. elected **William J. Haggerty,** 44, vp-insurance. He replaces **Harold Wiswall,** who died in January. Mr. Haggerty served as assistant vp for one year. That position will not be filled, he said. Mr. Haggerty's responsibilities include property, casualty and fidelity coverage for the bank, its subsidiaries and the holding company. Security is handled by a different bank department, he said, but added that he works closely with it. Deductibles and self-insurance are part of Mr. Haggerty's "all risks management concept" at the bank. Before he joined Manufacturers Hanover, Mr. Haggerty was employed at Frankline National Bank as assistant vp-insurance.

* * *

Joy Manufacturing Co., Pittsburgh, promoted **Nicholas Bucci** to manager-employe benefits and hired **Joseph R. Verostic** as administrator-employe benefits to fill Mr. Bucci's former position. Mr. Bucci, 27, came to Joy Manufacturing a year and a half ago from the Travelers Insurance Co., Pittsburgh, where he was a claims representative. He replaces Jesse H. James, who went to National Forge Co. Mr. Bucci's responsibilities involve pension funding and group insurance negotiations and he reports to the treasurer. Mr. Verostic previously was assistant claims supervisor at the Travelers Insurance Co., Pittsburgh. At his new job, Mr. Verostic works on day-to-day administration of pensions and group insurance programs.

* * *

Jesse H. James, formerly manager-employe benefits at Joy Manufacturing Co. for four years, was named to the newly-created position of manager of insurance and employe benefits at National Forge Co., Irvine, Pa. Mr. James, 28, reports to the treasurer and is responsible for property/casualty and group benefit insurance and safety and loss programs.

* * *

Dominick's Finer Foods, a Chicago-based supermarket chain, hired **Bob Evans** as corporate risk manager. The position is newly-created. Mr. Evans declined to give *Business Insurance* any other details, and it is not known where he was formerly employed.

* * *

Robert H. Siepka joined Henry Crown & Co., a Chicago-based privately owned financial holding company. Mr. Siepka is managing all property, casualty and group insurance for the firm, which specializes in investments. The position is newly-created, although Mr. Siepka takes over the responsibilities of **Tom Brouder,** formerly insurance manager for Monticello Realty Corp., a subsidiary of Crown. Mr. Brouder is moving into real estate matters for the company. Mr. Siepka reports to the vp. He was formerly assistant secretary and director of insurance for Allied Products Corp., Chicago.

* * *

E. G. Van Cata was named director of corporate insurance for Allied Products Corp., Chicago, effective Sept. 22, replacing **Robert H. Siepka,** who joined Henry Crown & Co. Mr. Van Cata was formerly assistant corporate secretary and manager of corporate insurance for Federal Signal Co., Chicago. He has not yet been replaced.

* * *

Borg Warner Corp., Chicago, named **Jay Misicka,** 49, manager, general insurance effective Sept. 22. He replaces **Thomas O. Lenhart,** who joined Baxter Laboratories Inc., Morton Grove, Il. (*Business Insurance*, Dec. 9, 1974). Mr. Misicka formerly was insurance manager at Allied Mills, Chicago. No one has been named to replace him there. Mr. Misicka also worked for General Portland Cement Corp. in Chicago and Dallas, and for Marietta Corp., Chicago, before the company merged to become Martin Marietta Corp. Mr. Misicka's new responsibilities include handling property, casualty and fidelity bond insurance at Borg Warner, and he reports to **Arnold F. Berg,** 48, director, risk management. Mr. Berg recently assumed the additional responsibility of employe benefit administration from **Donald Severson,** manager, employe benefits and compensation, because "it seemed logical to combine benefit administration with benefit coverage."

* * *

Merck & Co.'s subsidiary, Calgon Corp., promoted **James W. Jacobs** to the position of manager, compensation and benefits administration. Previously, Mr. Jacobs was office supervisor for the Pittsburgh-based chemical company's department of compensation and benefits. Mr. Jacobs replaces **Walter L. Lloyd,** who joined another Merck subsidiary, Kelco, in San Diego. ■

dates for buyers

Oct. 14-17: The 31st annual meeting and seminars of the Society of Chartered Property and Casualty Underwriters (CPCU) will be held in Dallas. Eight major seminars will deal with the most topical issues confronting the consumer and the insurance industry today. For further information, write to Martin Burke, director of public relations, Society of CPCU, P.O. Box 566, Media, Pa. 19063.

Oct. 19-22: The International Security Conference will be held in New York. Experts in the field of security will present a variety of workshops, ranging from an introduction to security to bomb protection planning. Attendance fee is based on the number of workshops attended. There will be a concurrent meeting of the International Assn. for Hospital Security on **Oct. 20-21.** For information, write the International Security Conference, P.O. Box 272, Culver City, Ca. 90230.

Oct. 20-24: INA Corp.'s International Safety Academy will hold a total loss control management conference in Macon, Ga. Experienced loss control managers, risk and insurance managers and safety personnel are encouraged to attend. Tuition is $395. For more information, write to the academy at 1021 Georgia Ave., Macon, Ga. 31201.

Oct 26-29: The Bank Administration Institute's 51st National Convention will meet in Atlanta. Featured speakers include James E. Smith, Comptroller of the Currency, and John F. McGillicuddy, president of the Manufacturers Hanover Trust Co., New York. The four-day meeting will cover a variety of subjects, with special emphasis on electronic funds transfer systems. For more information, write to the BAI, P.O. Box 500, Park Ridge, Il. 60068.

Nov. 3-5: The National Insurance Conference, sponsored by the American Management Assn., will be held in New Orleans. It will be divided into two sections: general insurance and employe benefits. For further information, contact John Devitt, group program manager, AMA, 135 W. 50th St., New York, N.Y. 10020.

Nov. 10-12: A seminar designed to provide bank executives with practical knowledge of risk management techniques will be held at the Kellogg West Center for Continuing Education, California State Polytechnic University, Pomona. Sponsored by the American Bankers Assn., the seminar will cover bankers blanket bond coverage, D & O, fiduciary, trust department E & O and safe deposit liability. Telephone reservations are recommended. Contact Edgar W. Armstrong, assistant director, insurance and protection division, American Bankers Assn., 1120 Connecticut Ave., N.W. Washington, D.C. 20036. (202) 467-4048.

Nov. 10-21: A comprehensive two-week workshop on fleet motor vehicle accident investigation techniques for representatives of fleet transportation companies is being offered by the Traffic Institute at Northwestern University. The workshop will highlight: How to conduct an on-scene accident investigation; how to gather physical evidence from the damaged vehicle and the roadway, and how to determine what part of the car played a key role in the accident. Tuition is $425, which includes study and reference materials. Registrations are being handled by the Registrar, Traffic Institute, Northwestern University, 405 Church St., Evanston, Il. 60204.

Nov. 14-19: The 21st Annual Educational Conference of the International Foundation of Employe Benefit Plans will be held in Honolulu. The three-day conference will focus on two vital issues—ERISA and the economy. In all, the conference program will cover 35 different subjects in 131 formal and informal sessions. Only foundation members are eligible to attend; up to 6,000 delegates are expected. For more information, contact the foundation at P.O. Box 69, Brookfield, Wi. 53005.

Nov. 17-21: The 25th anniversary of the Risk and Insurance Management Society will be celebrated with a Silver Anniversary dinner dance in conjunction with a series of educational meetings in Chicago. **Nov. 17-19:** RIMS will present its new Fundamentals of Insurance Purchasing course. Concurrent with the course and running through **Nov. 20,** a special risk management seminar conducted by the Risk Management Institute of the University of Dallas will also be held. The week will be topped off by the Society's Silver Anniversary dinner dance on Friday evening, **Nov. 21.** For further information, contact RIMS at 205 E. 42nd St., New York, N.Y. 10017.

Insurers had loss in '74 of $2.6 billion

NEW YORK—A net underwriting loss of $2.66 billion was sustained by the property/casualty insurance industry in 1974 and underwriters lost approximately $6 billion in policyholders' surplus, according to a study released by the Insurance Information Institute.

1974's losses contrasted sharply with the $5.76 million underwriting gain the industry experienced in 1973.

Premiums written by property/casualty insurers totalled approximately $45 billion in 1974, an increase of 5.9% over the 1973 total of $42.5 billion.

Fire losses in the U.S. jumped 21% to approximately $3.2 billion last year, from 1973 losses of $2.6 billion. Crimes against property increased by 18.4% in 1974, according to the III which estimates losses from burglary, robbery, larceny and auto theft at approximately $3.2 billion.

Burglary accounted for $1.1 billion of the total property loses sustained, the III said, auto theft losses totalled $1.16 billion, larceny-theft, $800 million, and robbery losses totalled $125 million.

Insured wind or hailstorm catastrophes caused insured losses of some $661 million in 1974, which was also the worst year on record for tornadoes, the III said.

Property damage resulting from tornadoes in 1974 exceeded $500 million for the second consecutive year.

The III report, contained in the 1975 edition of Insurance Facts released in mid-September, notes that the U.S. accounts for more than 52% of the insurance premium volume recorded in the free world, a total of $91.4 million in life and non-life premiums. ■

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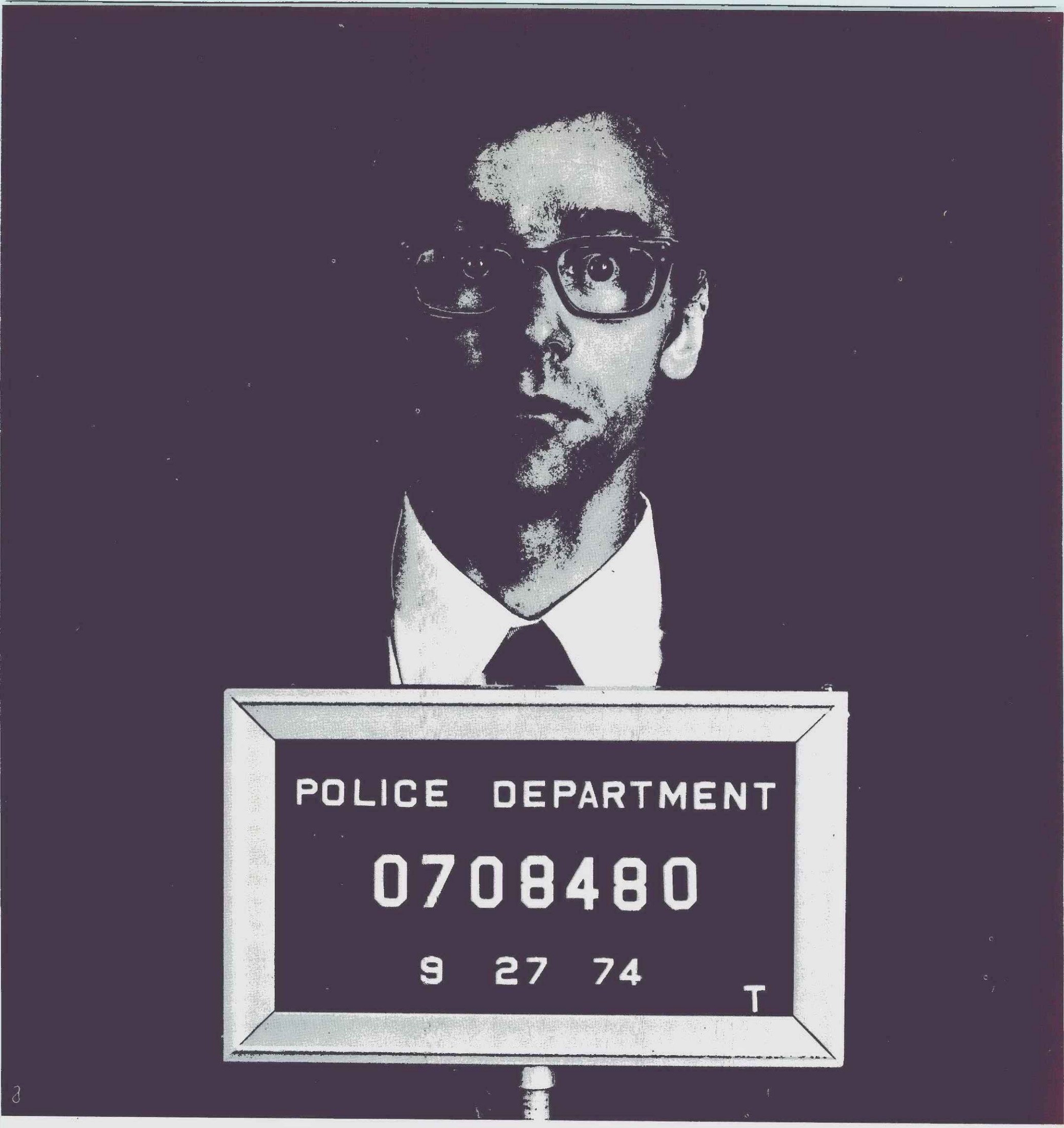

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