Week of September 19, 1977

business insurance

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

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New law transfers trauma claim liability

By JOANNE GAMLIN

SACRAMENTO — Governor Jerry Brown signed into law a bill transferring cumulative trauma claims to the last employer, to the sharp and bitter disappointment of large organizations that have self-insured their workers' compensation programs.

The bill (AB 155) becomes effective Jan. 1, 1978. It will transfer by Jan. 1, 1981 the total liability for cumulative trauma claims in workers' compensation cases to the last employer.

Under current state law, liability for occupational disease and cumulative injury claims is limited to employers who employ a worker during the five years immediately preceding either the date of injury or the last date on which the employe was employed in a hazardous occupation.

The new law also repeals the so-called "single employer exception" in existing legislation. That clause states that if a worker is

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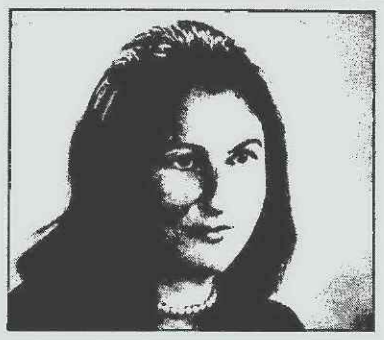
IRS axes deductions for premiums paid to captives; court test awaited

By KATHRYN McINTYRE ROBERTS



The ruling is 'not a sound analysis of tax law. It's controversial and open to challenge and there are two cases involving similar issues pending in the tax courts.'

–Marianne Burge, Price Waterhouse

WASHINGTON — The Internal Revenue Service has finally said it in a formal ruling: A U.S. parent company and its U.S. subsidiaries cannot deduct as business expenses premiums paid to an offshore insurance company wholly owned by the parent.

Deductions are allowed only to the extent the risk is assumed by an unrelated insurance company.

"It's caused tremendous discussion and havoc in the industry," said one tax lawyer. Experts speculate the ruling may curtail development of new captives, but no one is predicting wholesale closings of existing captives. Everyone is anxious for a court decision on the issue which they hope will overturn the IRS position.

Though lamenting that IRS has formally announced that the elusive tax advantage doesn't exist, many claim captives serve more important purposes and will continue.

The IRS ruling dated Aug. 29 deals specifically with the operation of an offshore captive—wholly owned by a U.S. parent and insuring only risks of the U.S. parent and its subsidiaries—under three different arrangements:

- The parent and its subsidiaries place their insurance directly with the offshore captive which retains 100% of the risks. None of the premium is deductible.
- The parent and its subsidiaries contract with an unrelated insurance company for insurance with the agreement that the insurer will immediately transfer 95% of the risk to the parent's subsidiary insurance company. Only the charge by the primary insurer for retaining 5% of the risk is deductible.
- The parent and its subsidiaries pay premiums directly to the captive for insurance, but the captive transfers 90% of the risk through reinsurance to an unrelated company. Only the portion of the premium paid for reinsurance is deductible.

Of course, since the premiums to the captive are not deductible, the IRS grants that losses "insured" by the captive are deductible.

Tax experts are pointing furiously to the specific nature of the tax ruling. Sidney R. Pine, an attorney with Trubin Sillcocks Edelman & Knapp in New York, said this particular revenue ruling should not apply if the captive is domestic, if the offshore captive is not wholly owned, if foreign subsidiaries or foreign insurance is involved, or if a significant—but no one knows how much—amount of unrelated insurance or reinsurance is written by the offshore captive.

He added, however, that "there is nothing to prevent the IRS from issuing additional revenue rulings."

Colorado insurance commissioner J. Richard Barnes wants a ruling addressing Colorado captives. He said the recent ruling "should not and cannot apply to Colorado captives," but "we don't make the interpretations. That's done back East."

An IRS staff member who worked on the recent ruling told *Business Insurance* that the principles of the ruling would apply to wholly owned domestic insurance companies and when foreign insurance is involved as well. "It's the same rationale," she said.

She could not say if the IRS is working on rulings dealing specifi-

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65 firms explore a group captive

By SUSAN ALT

CHICAGO — About 65 unaffiliated corporations are currently studying a preliminary report recommending the formation of a Bermuda captive to underwrite buffer layers of liability insurance.

Edward P. Lalley, president and CEO of Ideal Mutual Insurance Co. in New York, is chairman of the group, consisting mostly of Captive Insurance Company Assn. (CICA) members. Should such a group-owned insurance company be established, he expects it to be a stock company owned by a maximum of 25 companies already operating individual captive insurance companies.

The group-owned captive, representing a broad crossection of risks, would likely reinsure the "gap layers" of casualty coverage extending between the top of a primary layer of risk—say, $500,000—and the bottom of an excess layer starting as high as $5 million.

The Bermuda group captive, modeled along the lines of the Hopewell and United pools now operated by American Risk Management, probably would underwrite these buffer layers mainly for comprehensive general liability (CGL) and product liability lines, although Mr. Lalley said he thinks excess workers' compensation coverage might also be considered. The target date is Jan. 1 for the captive's operation.

These are the lines of insurance from which underwriters have increasingly withdrawn in recent years, making less capacity available for coverage needed to link primary and excess layers.

Premiums, meanwhile, have skyrocketed, leaving insurance buyers

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A special report: Excess & Surplus

The outlook

The excess and surplus market is so limited that buyers are "bidding up coverage." But new capacity on the horizon might bring rapid changes. **Page 11.**

The company view

Two of the largest U.S. excess/surplus insurers are riding a wave of fantastic expansion that hasn't ebbed yet in their short existence. **Page 11.**

Regulation

Insurance departments are examining new regulations for the excess/surplus market, but not everyone agrees new rules are needed. **Page 15.**

Municipalities

A reasonable retention opens the excess market to municipalities, even though they may not like the price. **Page 19.**

Other special report stories

- CAPTIVES are checking the waters in the buffer layer sea. **Page 18.**
- CALIFORNIA is a hotbed of excess and surplus activity. **Page 22.**
- STOP LOSS coverage booms as more and more health plans self-insure. **Page 23.**
- EUROPEAN insurers may add capacity to the excess market. **Page 26.**
- MARKET opportunities spur the creation of new wholesalers. **Page 27.**

Federal regulation

Most risk managers responding to an editorial advisory panel survey favor continued state regulation of insurance companies, but it's clearly a troubling issue. **Page 2.**

An explosion

The soaring cost of liability insurance appears to be behind the explosion in risk management departments. **Page 45.**

Directors and officers

The George Washington of D&O insurance in the U.S., American Home's Joe DeAlessandro, is a proud father. RiskWatch. **Page 84.**

Elsewhere:

- CALIFORNIA files lawsuits against four self-funded multiple employer trusts. **Page 6.**
- FASB rules spell trouble for small pension plans, experts warn. **Page 42.**
- COMMONWEALTH Oil finds a D&O policy for three months. **Page 82.**
- AN EYE-POPPING 71.8% rate hike for work comp is filed in Minnesota. **Page 85.**

Most prefer state regulation, but many aren't sure

By SUSAN ALT

CHICAGO — Risk managers across the country are confused and uncertain what will be the outcome of efforts to untangle the issue of insurance industry regulation.

Moreover, they told *Business Insurance* they fear that the question of state versus federal regulation of insurers is being or has already been decided between the regulators and the regulated firms, so that consumers affected by underwriting practices won't have any say about the future of their suppliers.

This is the picture that emerged from the fifth survey this year of 101 risk managers and other corporate executives who participate in the *Business Insurance* Editorial Advisory Panel.

For the first time in one of these surveys, risk managers and insurance buyers commented in notes accompanying their responses that they are agonizing over this problem. They honestly don't know if federal regulation of the industry would be better or worse than state regulation now in effect.

A significant minority of respondents said they couldn't take a strong stand one way or another because the ominous threat of an extended federal bureaucracy is no more appealing than the web of state rules and the tangled politics of regulation by the commissioners in each of the 50 states.

Despite the lack of conviction in some answers, a consensus emerged from the survey. Seven out of every 10 risk managers said they'd prefer to stick with state regulation of insurance companies. The remaining three out of 10 said they think federal regulation would be an improvement over the present system.

Federal regulation of insurers would result in higher premiums for insurance, 59% of the group of 101 risk managers were convinced. Some of their comments jotted alongside answers indicated a belief that when the federal government is involved, administrative overhead costs always rise.

On the other hand, 35% of the group believe federal regulation would simplify the regulatory process and result in less paperwork and either act to lower premiums (11%) or have no impact on what the buyer pays for insurance (24%). The remaining 5% said they didn't know what the effect of federal regulation of insurers would be.

Most risk managers don't think federal chartering of insurance companies would prevent insurance company insolvencies. Eight out of 10 panel members said federal chartering coupled with a federal insurance guaranty fund wouldn't alleviate insolvencies.

Risk managers were solidly opposed to Sen. Edward Brooke's (R-Mass.) idea of allowing insurers to freely switch back and forth between state regulation and federal chartering/regulation when they find one or the other "becoming too heavy-handed," as Sen. Brooke has put it. Eighty percent of the panelists said they wouldn't permit such switching by the regulated firms.

The Justice Department's view that federal regulation of insurance would result in more competition within the insurance industry drew vehement disagreement from the majority of the 101 responding risk managers (74%). But another 21% think more competition in the industry would result from a switch to federal from state regulation, while the remaining 5% said they didn't know what would happen.

Exactly half of the panelists said they think federal regulation of insurance would have a bad effect on buyers of insurance. Such a change would have a good effect, said 20%, of the group while another 27% believe federal regulation of insurers would neither help nor hinder their ability to buy insurance. A few fence-sitters, however, said they didn't know what the impact would be (3%). ■

What our panel says

- "The problem that this survey does not address is the nature of federal regulation. For example, if regulations are of the 'prior approval' variety, the impact would be quite different than the open rating laws of states like California. Judgments on federal vs. state regulation can only be made on states-rights and similar constitutional issues. To discuss impact on premiums and solvency, you must first decide such variables as rating laws and solvency standards to be applied."
- "It all depends on what you mean by regulation. My view is that rates and forms should never be regulated. Regulation should look to financial responsibility, fraudulence, etc. One of the difficulties in the past has been timely information. Insurers went broke before anybody realized anything was happening. Modern on-line techniques and programming would result in hourly updates of financial information and hence, no surprises."
- "We would be for federal regulation if it weren't for the fact that past experience clearly shows it would create a vast bureaucracy that would prove to be far more costly than state regulation. We do feel federal regulation would result in higher quality regulation."
- "I don't think that the states are doing the proper job in chartering insurance companies. As much as I resent federal regulation, I believe it would be beneficial to the industry and the buyer with the great qualification: How will the federal government implement and administer such a program?"
- "While the concept of federal charters, regulation, security, etc. would lend uniformity and in some respect simplify company administration, I cannot believe that the federal government, in its eminent wisdom, can do a more efficient and effective job of regulating this industry than it has any other."
- "I am convinced that more federal involvement in the insurance industry would not be in the best interests of the policyholder or the insurance company. It will create more bureaucracy and provide still another avenue for some shady politicians to line their pockets. To think that more federal regulations will solve all our problems is pure folly."
- "Too much government intervention is never good. On the other hand, what can be worse than the present situation?"
- "The reason I think federal or universal regulation would work is because of all the politics involved in various state regulatory bodies."
- "I personally believe that insurance department of Florida is doing an adequate job of chartering, monitoring, etc. of insurance companies operating in this state. If the federal government gets involved in the regulation of this industry I can foresee an immediate increase in premium costs. Someone always has to pay for federal regulation."
- "Federal regulation of insurance companies would increase insurers' administrative costs, be unresponsive to local problems with national guidelines and perpetuate unreasonable insurer operating systems (e.g. rating systems). A California-type open rating system, adopted on a national level through federal regulation, would be the only positive result of federal involvement in the insurance industry."
- "As industry and our society continue to expand, it becomes obvious to me that state regulation of insurance is an anachronism. The chaos of auto no-fault is an example."

D&O trial begins

LOS ANGELES—A trial has begun in the complex directors and officers liability insurance lawsuit involving Mattel Inc. and Marsh & McLennan.

The lawsuit contends that Marsh & McLennan failed to tell two excess insurance companies about a class action shareholders suit against Mattel when the companies agreed to provide directors and officers coverage.

The two companies are Unigard Mutual Insurance Co. of Seattle and International Surplus Lines Insurance Co. of Chicago. Under 1975 agreement between Mattel and the two insurers, the companies agreed to contribute $13.8 million toward an out-of-court settlement of the shareholder suits. In return, Mattel agreed to sue M&M. ■

errors & omissions

• The American Bankers Assn. surveyed a sample of its member banks and found that bankers blanket bond premiums for banks with $25 million averaged $2,240 while unrecovered losses were $10,780. An error in the September 5 issue resulted in extra zeroes for both this premium figure and the unrecovered loss figure.

• Self-Insurers Service Inc., Chicago, corrected its original client figures that appeared in an August 22 story. SIS said it has 33 clients for whom it administers workers' compensation claims. These clients have a total of 170 plants. In addition, SIS administers self-insured benefit plans for 29 clients. Since SIS has a total of 48 employer clients, it stands to reason that 14 of these clients contract with SIS for administrative servicing of self-insured programs in both fields.

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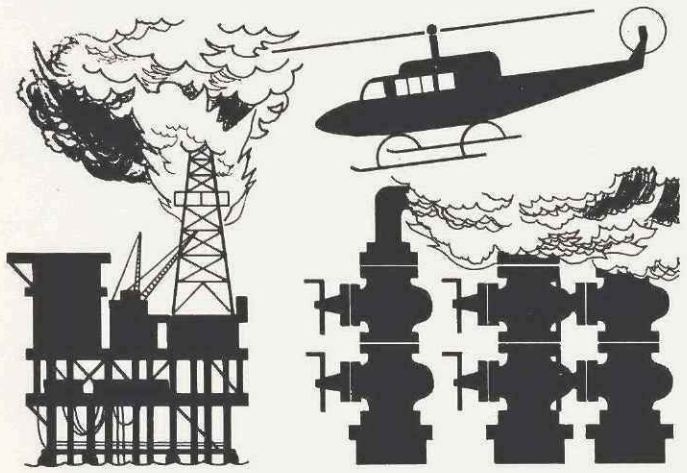

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—the benefit beat

Arvey adds savings plan to upgrade benefits

AVERY INTERNATIONAL in San Marino, Calif., has launched a new voluntary savings program as part of an effort to upgrade employe benefits. Eligible employes can contribute up to 6% of their salary; the company will match half the contribution. Employes become eligible after one year of service; company contributions begin after three years. The plan was derived from Avery's discontinued profit sharing plan with assets of about $11 million. Participants can elect either a fixed income guarantee contract or a common equities fund, both with John Hancock Life Insurance Co. The company added new benefits for early retirement and disability when it discontinued the profit sharing plan last year. Avery is a $362 million a year manufacturer of adhesives, material labels and labeling systems.

MAX FACTOR & CO. in Hollywood, Calif., began paying full disability benefits for maternity claims on July 1. Maternity benefits had been rather low, a spokesman indicated. "Moreover, our group medical policy is underwritten in New York which now has a law mandating full benefits for pregnancy disability," the spokesman continued. In addition, July 1 was the renewal date for the coverage and the premiums were expected to rise substantially even without the expansion of benefits, the spokesman said. No figures on how much the change will cost Max Factor were available.

THE COST OF providing employe benefits has increased twice as fast as the cost of wages. The Council on Wage and Price Stability found that the cost of employe benefits rose 133.9% between 1966 and 1974 while wages only increased 73.7%. Although final figures for 1975 and 1976 are not available yet, the council said "more up-to-date figures would show an even higher proportion of total compensation accounted for by benefits." The greatest increase in employe benefits occurred in health benefits which jumped a whopping 158.3% in the eight-year period. In the chemical and allied products industry, for example, employe benefits now account for 42.2% of payroll costs.

GROWTH OF HMO enrollment and rates was reported recently by Employers HMO Service, a bimonthly newsletter on the health maintenance organization concept. Qualified HMOs had 258,288 enrolees at the end of March, a 24.3% increase over the preceding quarter. At the end of June, five more HMOs were federally qualified for a total of 35 qualified HMOs. The newsletter also outlined rate increases instituted by HMOs that had been approved for enrollment of federal employes: 32 HMOs approved by the Civil Service Commission in 1975 increased their 1976 family rates an average of 19.3% and 46 HMOs approved in 1976 will have raised 1977 rates by 13.7%. Also noted, Kaiser Foundation Health Plan has 3,179,320 members, one of every 70 people in the U.S.

THE AMERICAN Medical Assn. is countering HEW and FTC reports favorable to HMOs with its own study showing that health maintenance organizations aren't all they're cracked up to be. The FTC might have found that HMOs are good competition for doctors and hospitals, producing cost-cutting incentives in the health care field, but the AMA contends in turn that HMOs might actually be discouraging patients from seeing doctors or using HMO services. "Recent evidence suggests that HMO patients tend to see a physician less than do non-HMO patients," says the AMA, adding also that "they tend to receive less preventive care than do non-HMO patients." The AMA asserts that so-called "skimping" on services is evident because one HMO control group had 15% fewer ambulatory visits and 18% less use of prescription drugs than people seeing non-HMO doctors.

Infants and small children enrolled in HMOs received much less preventive care (DPT shot, polio shot, physical exams, measles shot, booster shots) than those not in HMOs, the AMA found. Moreover, pregnant women not in HMOs tended to see their doctors earlier and more frequently, the AMA points out, which resulted in a higher rate of normal births, fewer births with complications and substantially fewer stillbirths and miscarriages, than mothers-to-be enrolled in HMOs.

The AMA's point in re-analyzing various HMO studies is to show that fee-for-service doctors provide more preventive care than HMOs and a higher quality of care.

FURTHER CUTBACKS in medical and health benefits to mine workers are possible due to shortages in the 1950 and 1974 benefit trusts covering 811,000 beneficiaries. Trustees for the United Mine Workers of America Health and Retirement Funds said mine closures due to flooding and unauthorized work stoppages during July and August sharply reduced the amount of money paid into the funds, making future cutbacks likely. In July, only $16.2 million was paid into the two funds; normal income for the month is $25.1 million. Health and medical benefits previously were reduced in July which precipitated the current round of walkouts. At that time, beneficiaries were made responsible for the first $250 for each medical and hospital bill; previously there was no deductible. Trustees gave no indication of the possible extent of the cutback in health benefits. In a related development, trustees warned that a $8 million shortage in the 1950 pension trust fund might result in a delay or reduction in next month's pension checks to more than 81,000 miners. Unauthorized walkouts also are being blamed for the deficit in the pension fund.

FINDING A MISSING employe can be a frustrating task, warns the Johnson & Higgins benefit newsletter. But the Social Security Administration can be used to track down an employe who is eligible for retirement payments or ESOP benefits. The Social Security Administration will forward a letter to the missing employe if the letter is enclosed in a plain, unsealed envelope, the missing

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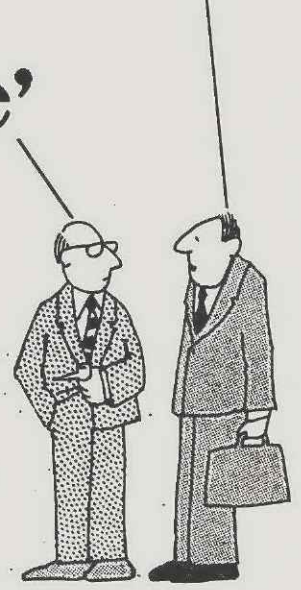

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Benefit beat . . .

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A CLASS ACTION suit by dissident doctors and dentists in Massachusetts designed to put the state Blue Shield into receivership has been dismissed. The suit by the Massachusetts Federation of Physicians and Dentists alleged that Blue Shield had insufficient funds to make scheduled fee payments. The federation also charged Blue Shield with violations of the state fair business practices act in their recent successful bid for health coverage of state employes. The court found Blue Shield in sound financial standing and dismissed the first part of the suit, while proceedings into the contract violation allegations are to continue. The federation represents less than 200 of the 12,450 physicians practicing in Massachusetts.

RUTGERS COMMUNITY Health Plan is building an addition to its health center which will more than triple its operating space and allow expansion of its current 14,000 membership. The private non-profit HMO now contracts with 85 private employers, including AT&T, as well as the state of New Jersey, covering employes of state schools, state departments and municipalities. When the building addition is completed early next year, the federally qualified HMO will activate more employers. E. I. DuPont, General Motors, AT&T Long Lines, New Jersey Bell, Medicare, Medicaid and Bell Laboratories are among those slated for activation. On its first anniversary the HMO had 11,000 members, 4,000 more than had been projected. RCHP is aiming for 24,000 members by its second anniversary next July. Its monthly rates are $23.08 for an individual and $65.38 for a family, up 7.73% over its first year's rates. RCHP's service area is the 15 mile radius around New Brunswick, N.J.

GROUP LIFE INSURANCE purchases in 1976 totaled $102.8 billion, up 8% from 1975, said the American Council of Life Insurance. About two-fifths of all group life insurance purchased last year was under new master contracts issued chiefly to employers for their workers. The remainder was under existing contracts broadened to include more employes or to increase benefit levels. Last year's purchases included $3 billion of group coverage for employes' dependents.

PEPSICO INC. was activated by a health maintenance organization that covers approximately 22 of the company's 1,300 employes located at Purchase, N.Y. The Westchester Community Health Plan, which activated Pepsico June 1, was only eligible to cover those employes who live in the same zip code area as the health plan's location. Cost to the company for the HMO in comparison to cost for indemnity insurance coverage is "significantly higher," according to Richard Hornigold, corporate director of benefits. At Pepsico's Houston office, the company has been activated by Prucare but a contract hasn't been drawn up yet. No employes have been enrolled.

UNITED AIRLINES and the Assn. of Flight Attendants have agreed on a new 30-month contract covering 8,000 flight attendants that substantially improves medical and dental insurance plans. The major medical benefit was increased to $300,000 over a three-year benefit period; the old limit was $200,000, also over a three-year period. The surgical schedule was boosted to $2,200 from $1,800. The maximum annual dental benefit was raised to $1,500 from the old $1,000 limit. In addition, the dental reimbursement schedule, which had not been changed since 1969, was increased 30% for all types of dental work. The Assn. of Flight Attendants puts the total increase in benefits at 35.2%, wages account for 27.1% of the boost. In addition, attendants working on flights with less than a full crew, will receive a $4 per hour understaffing allowance; the prior allowance was $3 per hour. Ratification of the pact is expected at the end of the month.

BAKERY WORKERS will receive improved medical and pension benefits under a new two-year agreement between Nabisco Inc. and the Bakery & Confectionery Workers. Under the pact, which covers 11,000 employes, monthly pension payments to retirees with 25 years of employment will be raised to $400 from the current $275 per month. Sick leave benefits will jump to $90 a week from $80. The surgical schedule was increased to $600 from $500. Maternity benefits have been boosted to $300 from $200. Family coverage for newborn infants will become effective immediately at birth; prior to the agreement, coverage began 14 days after birth. In addition, Nabisco employes with five years of experience are now entitled to three weeks of paid vacation. Previously, seven years of service was needed to qualify for a three-week vacation.

•

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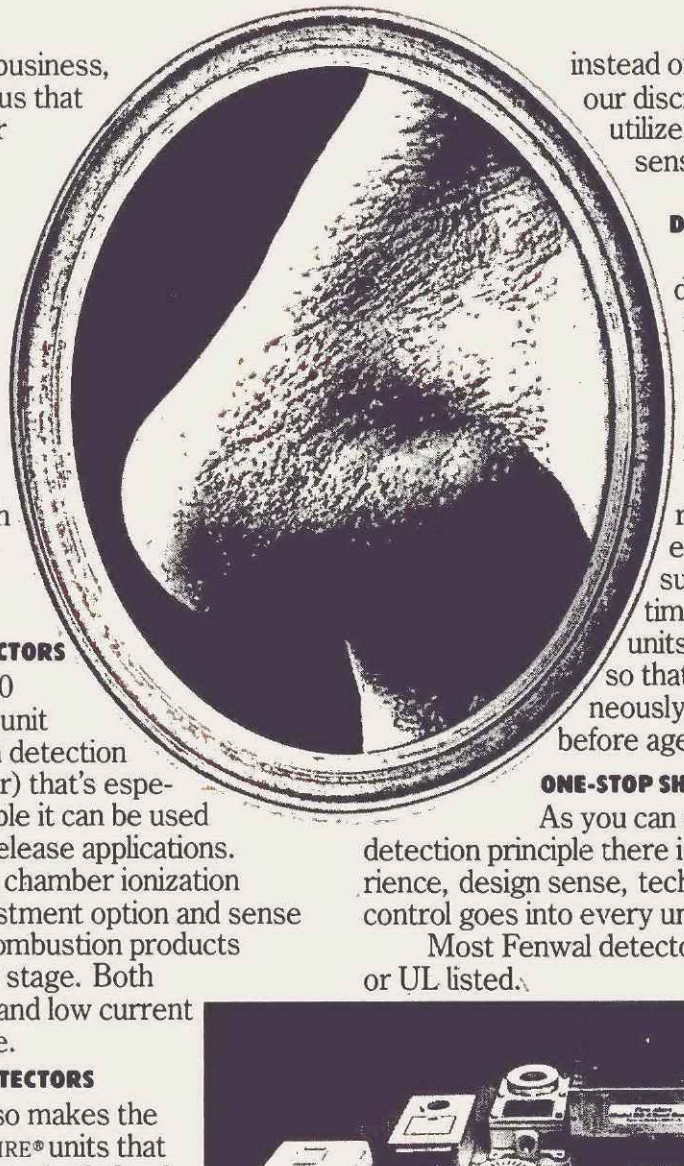

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Arson committee urges amendment

SANTA ANA, Calif.—An ad hoc committee of the Western Insurance Information Service has developed a new endorsement to help stem the explosion of arson.

The service formed an arson prevention committee in California to seek solutions to the arson problem. The endorsement was submitted to the Insurance Services Office.

The endorsement would allow insurance companies to turn over to police or fire investigators policies, claim records, a history of previous claims and any other relevant information.

The endorsement requires any dispute between an insured and the insurance company over whether arson was involved to be submitted to arbitration. The amount in dispute would be placed in an escrow account and the insurance company would pay for the arbitration proceedings. ■

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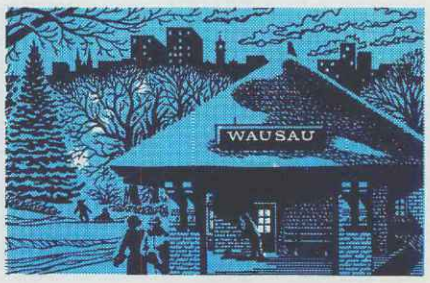

Employers Insurance of Wausau

Wausau Wisconsin

Other states intensify efforts

California challenges four self-funded trusts

By GREG DAVID

SAN FRANCISCO — California filed suit this month against four self-funded multiple employer trusts as states intensified their efforts to assert jurisdiction over the trusts.

Action by California has been considered crucial in settling the self-funded trust controversy in the absence of a definitive position from the U.S. Labor Department. The state has the nation's largest insurance department and is the home of a large number of benefit trusts.

In addition to California, Florida and Georgia this month issued a series of cease-and-desist orders against self-funded trusts operating in those states.

The self-funded trusts provide medical and death benefits, usually to small employers but sometimes to individuals as well. The trusts file with the Labor Department as employe benefit plans under the Employe Retirement Income Security Act (ERISA).

They argue ERISA preempts state regulation of their activities.

But the Labor Department has not yet ruled that any self-funded multiple employer trust is covered by ERISA and the department has not issued any regulations governing their conduct. A regulatory vacuum developed as states were previously reluctant to enter the murky situation.

At least two trusts have filed for bankruptcy, leaving thousands with unpaid medical claims that may total $7 million.

The trusts being challenged are 3/33 Group Benefit Trust of San Francisco, AID Fringe Benefits Trust of Hayward, Calif., Common Market Employe Benefit Plan of Phoenix, Ariz., and National Health Benefit Plan, also of Phoenix.

Two of the trusts—3/33 and AID Fringe Benefits—are represented by Claude J. Dorais, a Beverly Hills attorney who has emerged as a leading spokesman for self-funded multiple employer trusts. Mr. Dorais' law firm of Miller, Dorais & Wheat represents a substantial number of self-funded trusts.

Common Market, the subject of previous *Business Insurance* stories, is headed by Frank Barry of Phoenix. A suit against Common Market by the Arizona department of insurance is pending in federal court in Phoenix.

National Health Benefit Plan was created by an actuary named William Robinson. Mr. Robinson was involved in establishing rates for the National Multiple Employers Foundation and Hospital Welfare Assn., the two large self-funded trusts that have filed for bankruptcy.

The 3/33 trust originated with a benefit committee composed of employers participating in the trust, Mr. Dorais said. AID's benefit committee is also independent of the administrator.

The insurance department contends that the administrator is the driving force behind both trusts, however.

Both trusts work only through employers, Mr. Dorais said.

The insurance department allegations are straightforward, Mr. Dorais observed. "They say these outfits are insurance companies and that they do not meet the requirements for insurance companies and could not meet those requirements."

"But those requirements apply only to insurance companies and these trusts are organized under ERISA and may not be regarded as insurance companies," he argued.

A federal judge in Kansas ruled last month that Employe Security Benefit Assn., a self-funded trust based in Bellevue, Wash., was not an employe benefit plan under ERISA but merely a scheme to escape state insurance regulation.

But ESBA solicited individuals as well as employers and argued that it was covered by the employe beneficiary language in ERISA. But both the court and the Labor Department, which filed a friend of the court brief in the case, ruled such an organization did not fall under ERISA.

The cases in California could provide a precedent on whether trusts that deal exclusively with employers are also merely insurance schemes to escape state regulation or employe benefit plans under ERISA. The Labor Department has been unable to reach a conclusion on this point.

In Florida, cease-and-desist orders were issued against 13 trusts and 40 agents soliciting business for the trusts. The trusts are ESBA, Continental Employe Benefit Plan of Lakewood, Colo., and National Business Conference of Portland, Ore., all trusts using a package that originated with a Washington life insurance company; FCRA, Assn. Plan Administrators and UBE Trust, all of Tampa; Employe Benefit Plans Assn. of Miami; Multiple Business Benefit Plan of Birmingham, Ala.; Corporate Employers Trust and Capital Employers Benefit Trust of Largo, Fla.; Employe-Employer Trust Assn. of Golita, Calif.; United Services Employe Benefit Plan of Everett, Wash., and United Benefit Assn. of Fort Smith, Ark.

Georgia issued a cease-and-desist order against Policyholders Employers Trust of Birmingham, Ala. The trust was formed in Jan. 1, 1971, to set up a pool for business developed by agents of Marketing Management Inc. It was insured until August 1976 when the insurance company cancelled. The trust then self-funded certain group benefits, according to trust documents examined by a state insurance official.

Meanwhile, the National Assn. of Multiple Employer Trusts (NAMET) has reorganized. The organization, now the National Assn. of Trust Administrators, will accept administrators as well as trusts for membership. Mark Killebrew of Protective Benefit Assn. remains president.

The association is working on a series of voluntary standards for members which will be discussed at a meeting in Los Angeles on Oct. 7. At the same time, the group decided not to intervene in the Kansas court case against ESBA, despite the precedent which may create difficulty for most of the members of the association, who are similar to ESBA. ■

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editorial opinions

Punitive damages should be excluded

NORMALLY, WE SIDE with buyers of commercial insurance in their praise of broader policies and their disapproval of actions by insurers that remove coverage from insurance policies. But in the case of the ISO's long-anticipated action in filing for the exclusion of punitive damages from liability policies, we heartily approve.

It has long been a matter of dispute whether punitive damages should rightly be insured at all. In some states, it is against public policy to insure against penalties assessed by the courts.

The question surrounding the controversy was not one of intent. Many courts have said that liability policies as now written should cover punitive damages. The moral issue, however, was whether a company faced with a penalty for some kind of gross negligence should be able to transfer to an insurer a financial obligation intended to serve as a deterrent.

▪ ISO members said no, although the decision was far from unanimous. Some insurers are expected to continue covering punitive damages as part of their standard liability policies, while others may come out with endorsements or riders under which a buyer can pay an extra premium to buy back the coverage excluded under ISO's new wording.

Aside from the fact that the insurance industry has been trying to scuttle this coverage because losses in the area of punitive damages have been very heavy, we don't believe punitive damages should be insurable at all. We would take the position of 11 states whose legislators or courts have decreed that organizations must pay penalties out of their own pockets.

There are certain responsibilities that any person or company must take upon himself or itself. One of those is the duty to be reasonably prudent in the manufacture of products and the operation of a business. These duties should not be insurable because they are not like other financial debts. These duties constitute an obligation to be humane and to refrain from recklessly hurting others or the property of others.

▪ When these duties are breached, punitive damages are often levied in a court of law. The full weight of that punishment should be felt by the person or organization being disciplined immediately when the court inflicts the penalty. Otherwise, the chastisement has no effect at all, if it is deferred through the purchase of insurance. Management should be made to feel the full effect of the financial impact, teaching as it does that those guiding the organization must be accountable for any alleged negligence by the entity itself. It is only when companies and the individuals who run them feel this financial pressure that they will manage this punitive damage risk the correct way: By not condoning any willfully or wantonly negligent acts.

▪ The risk of being hit with a punitive award is one that should be prevented, not insured.

Excess/surplus looks like a pot of gold

ALL SIGNS ARE pointing in the same direction: A stabilized insurance industry that may even become competitive again in the months of 1978.

The latest roundup reports from the industry's many trade associations point to favorable results during the first half of this year. Personal lines rates are falling as more insurers file rate decreases on auto and homeowners insurance. Commercial property insurance companies have been growing increasingly competitive over the last six to 12 months.

The latest signals are contained in our own excess and surplus lines stories in this issue. The general tenor of the marketplace for excess liability coverage is one of frenzied enthusiasm. Let it not be said that the insurance industry fails to see an opportunity, for the rush toward the excess/surplus business is a clear sign that capacity is available, when and if . . .

Much of the mystique surrounding the excess and surplus lines business remains intact. Although many more buyers of insurance are using the excess markets, few understand the role of the intermediaries acting as liaison between the so-called retail insurance brokers and the excess underwriters. Even fewer buyers are aggressive enough to ask to sit in on negotiations between their brokers and the intermediaries or the excess underwriters.

Even now, brokers are submitting applications for excess coverage that are being turned down because the submissions are incomplete. The upshot of this unprofessional behavior is that some unknowing buyers are being refused coverage at any price and the excess insurers are whittling down to a small group the brokers from whom they will accept submissions.

There doesn't appear to be any standard form that a submission takes, and the risk report can often run from only a few pages up to many hundreds. But it's the same old story: The buyer had best know as much as (or more than) the broker with whom he's working so the submission will contain all the necessary information.

Meanwhile, insurers seem almost certain to continue entering the highly lucrative excess lines underwriting business. For all appearances, they view excess lines with its individual ratings and tailor-made forms as the proverbial pot of gold at the end of the rainbow.

This may sound as if the excess markets are still pretty tight, and that is true, to a certain extent. Risks are flowing in droves and underwriters are confident that for every risk they summarily turn down because a submission isn't properly prepared, there will be four waiting to fill the gap.

letters

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

Biorhythm works

To the Editor: I have read several articles recently on the biorhythm theory and was particularly impressed by James A. Knight's recent article. Because of it, I did a study of 24 recent work-related accidents in our company.

Dr. Barry Schweig might be interested to learn that we found 46% of the accidents occurred on "critical" days in the biorhythm cycles of those involved. Furthermore, 96% of all the accidents (23 of the 24) occurred on either a "critical" day or on a day when the physical or sensitivity cycle was at its lowest ebb.

I don't really think this can be dismissed as "Teutonic crackpottery."

C. J. Kueper

Safety director, Green Bay Packaging Inc., Green Bay, Wis.

Reading policies

To the Editor: Re: riskWatch, August 22, 1977.

On reading Raymond M. Lane's column, "Reading insurance policies finds our columnist groping for aspirins," I am reminded of the old saw which says, "The big print gives it to you while the small print takes it away."

Eugene P. Hazlewood

Secretary, Christian Board of Publication, St. Louis, Mo.

. . . more on reading

To the Editor: Raymond M. Lane's article of August 22, 1977, "Reading insurance policies finds our columnist groping for aspirin," certainly reflects the frustration John Q. Auto-owner and John P. Businessman occasionally feel when interpreting their insurance coverages. I'm convinced that insurance policy (and mind you, all legal contract) language is high on the Washington consumerists' hit lists, and something's gotta give if the insurance industry doesn't fix this perceived problem beforehand.

What we have within the fine-tuned language of policies is a need for more definitions, not for simplification. Simplification will

Continued on page 94

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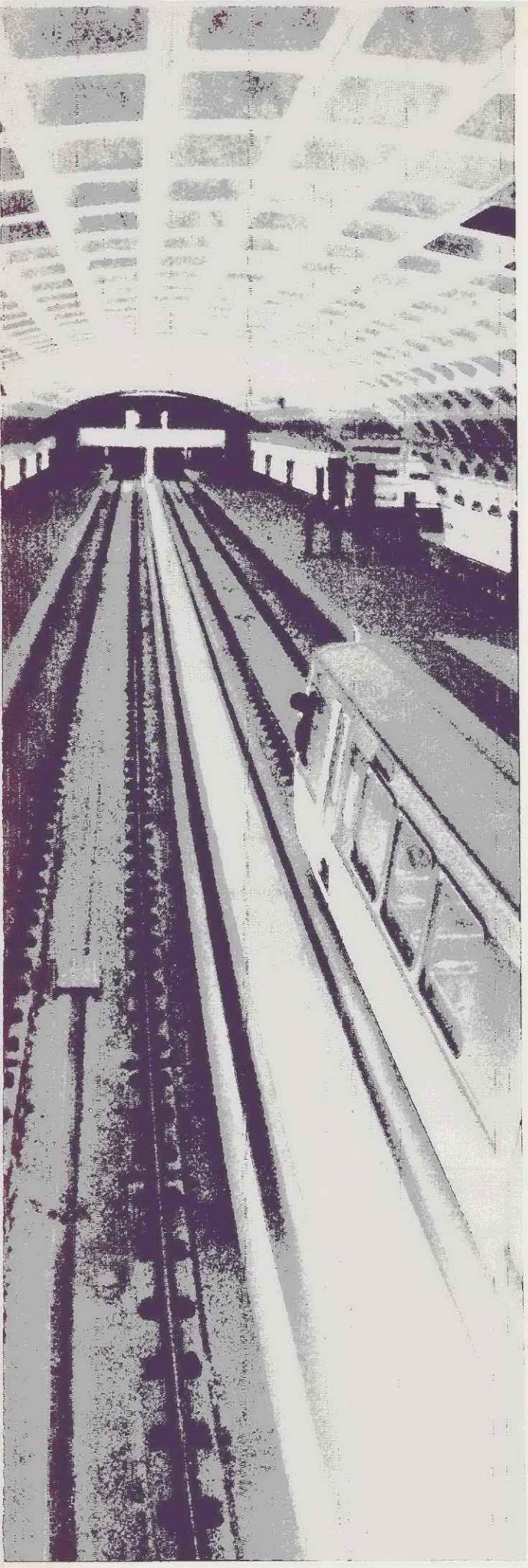

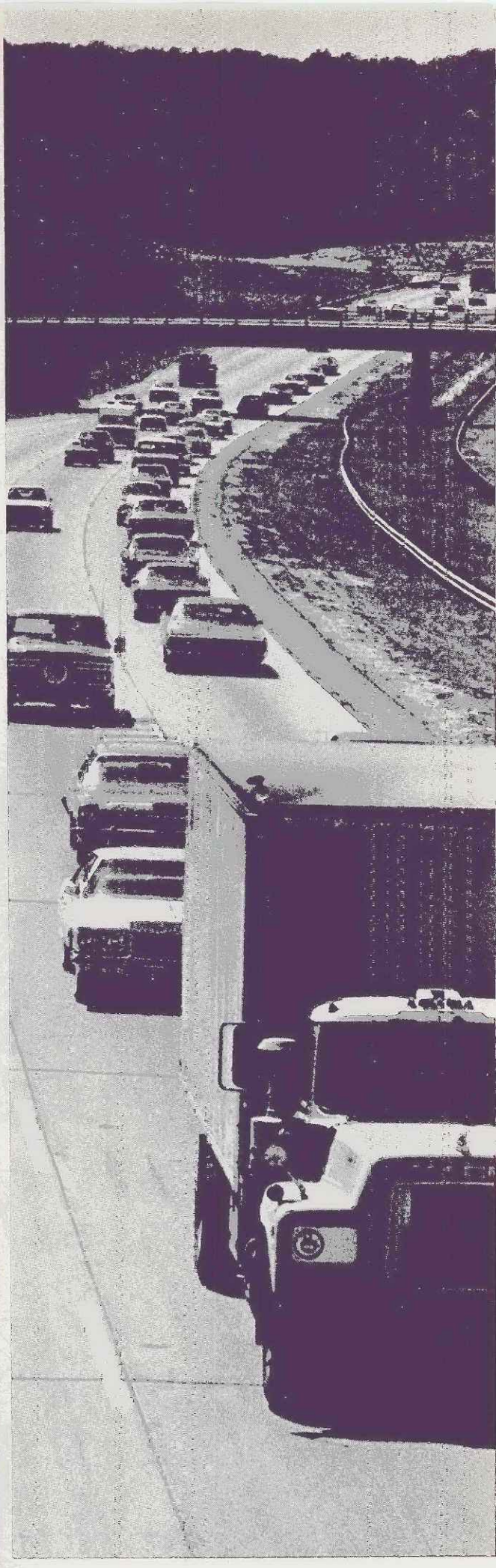

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EXCESS/SURPLUS
and special risks

Market tight, prices up, but some predict change

By REBECCA A. FANNIN

NEW YORK—Capacity in the excess and surplus markets has become so limited that buyers are "bidding for coverage" even though they face rate increases up to 400% and 500% for three-year liability policies.

The market constraint has allowed underwriters to "pick and choose what they want to write and has permitted them to increase rates and still write all the coverage they want," said Thomas Bloom, vp of McAlear Associates Inc., a brokerage firm in Grand Rapids, Mich.

But ironically, the tight market could stage a fast turnaround as more underwriters are looking at the profits to be made from the excess and surplus markets. Their willingness to once again provide coverage could mean expanded capacity, which ultimately could increase competition and lower rates.

The underwriters are becoming more willing to write excess and surplus lines insurance because they are "greedy and realize they can have some of the profits themselves," said Carol McRae, vp of Dub Martin & Co. Inc., a surplus lines broker in Dallas.

Currently, though, excess and surplus underwriters are so inundated with submissions for coverage that some have even refused to accept any more submissions. Northbrook Insurance Co., for example, refused submissions during a recent six-week period on the basis of the sheer volume of applications.

"The underwriters are taking about 10% of the submissions for new business," but for renewals the problem isn't as bad, said H. James Griffith, president of Princeton Risk Managers Inc.

Excess and surplus brokers are also flooded with business. "I've had the best four months that I've ever had," said Ms. McRae.

Premiums for the excess and surplus business more than doubled during the last year in California and nearly doubled in Texas. In 1976, $160.9 million was placed in California, up from $77.5 million in 1975. These figures refer to insurance written by non-admitted companies. Texas figures for 1976 were $102.6 million, up from $66.8 million in 1975.

Expanded capacity is expected from at least two standard insurance companies, the Great American Insurance Co. and The Hartford Casualty Insurance Co., which are in various stages of forming excess and surplus underwriting subsidiaries.

Although these companies' moves are only the first indication that capacity is expanding, they could signal the beginnings of a trend toward additional capacity from other standard companies.

"Once one stock company comes in and writes umbrella coverage, the others will follow," predicted Jeremy D. Cooke, vp of Major Surplus Ltd., an excess brokerage firm in Livingston, N.J. Mr. Cooke added that "there is a strong feeling that the stock companies are coming to write excess because they are aware of the enormous premiums. But I don't think that the business will flow back in the same ratio as it did during the last 15 years."

Changes in the London market would play a large role in altering the excess and surplus markets. According to the London Economist, 40% of all surplus lines insurance sold in the U.S. was underwritten in London, including Lloyd's and the company markets.

But, according to Mr. Cooke, who worked with Sedgwick Forbes and Stewart Wrightson, two of the major casualty brokers on the floor of Lloyd's before joining Major Surplus Ltd., expanded capacity from London isn't likely to occur.

Even though Lloyd's has had a large increase in membership, Mr. Cooke said, "Lloyd's has a capacity problem and capacity for casualty in Lloyd's hasn't increased as in other companies."

Another positive sign for risk managers is that primary carriers are becoming more willing to cooperate in self-insurance programs, activity formerly left to the surplus lines markets, according to Fred H. Pearson, president of the Chicago surplus lines brokerage firm Avreco Inc.

Underwriters traditionally have been nervous about providing the first layer of coverage above a self-retention program because of the problems that can occur with claims handling, said a West Coast risk manager. Underwriters will charge more pre-

Continued on page 14

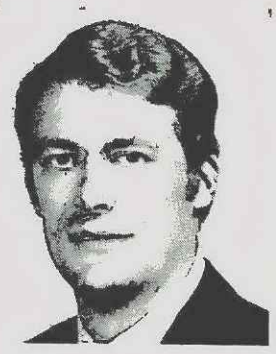
What the brokers say

Underwriters 'pick and choose what they want to write . . . increase rates . . . and still write all the coverage they want.'

—Thomas Bloom

'I've had the best four months that I've ever had.'

—Carol McRae



'Underwriters are taking about 10% of the submissions' but renewals aren't that bad.

—H. James Griffith

2 insurers discover an excess of business

By KATHRYN McINTYRE ROBERTS

CHICAGO—Two excess/surplus underwriters based here are riding a wave of fantastic expansion that hasn't ebbed in their four and five year existence.

And the presidents of the two companies predict continued growth of their business.

Jorgen Ravn-Hansen, president of Northbrook Insurance Co., says the Allstate subsidiary will write $200 million in premiums this year to take the top spot among U. S. excess/surplus carriers.

Wayne Prather, president of Columbia Casualty, says 1977 business will total $100 million in premiums. Although just half of Northbrook's business, the CNA subsidiary's premiums will place it fourth among this country's excess/surplus companies.

(Lexington Insurance Co. and First State Insurance Co. are in the number two and three spots, according to an industry source.)

The presidents of Northbrook and Columbia Casualty agree restricted markets of licensed insurers have sent insurance-hungry clients to their doors. That situation will continue, they say, maintaining their growth in underwriting primarily U. S. risks.

Prices, however, appear to be stabilizing, the two principals agree. CNA's Mr. Prather said prices continued to rise until "two or three months ago," but are leveling out now. Improved results among major insurance companies affect prices in the excess/surplus market, he said. "And there's some element of how much the public will pay for a product," he explained.

Northbrook's Mr. Ravn-Hansen predicts the price of excess/surplus casualty insurance "will go up, but not drastically," and property prices might even experience "a slight decrease."

Northbrook Insurance Co. wrote less than $300,000 in premiums in its first year in 1972, says president Jorgen Ravn-Hansen. This year the Allstate subsidiary expects to write $200 million in premiums, making it the largest U.S. excess/surplus insurer.

Jorgen Ravn-Hansen

Columbia Casualty wrote $2 million in premiums in its first year in 1974, says president Wayne Prather. This year the CNA subsidiary hopes to write $100 million, placing it fourth on the list of U.S. excess insurers.

Wayne Prather

The two presidents proudly outlined their companies' growth during interviews with *Business Insurance*.

Northbrook wrote its first policy in October 1972 and finished the year with $289,000 in premiums. In 1973, the company's gross premiums leaped to $7.6 million. Premiums more than tripled to $23.1 million in 1974, jumped to $63.5 million in 1975 and totaled nearly $118 million in 1976.

Mr. Ravn-Hansen attributes Northbrook's growth to "a fine professional staff, good service, being backed by Allstate, being able to provide capacity and the unfortunate situation in the last few years in the direct market."

Columbia Casualty completed its first year in 1974 with $2 million in premiums. The next year the company expanded its business to $8 million and in 1976 took in $45 million in premiums. Growth will continue as long as "the primary market is bad," president Prather predicted.

Mr. Ravn-Hansen anticipates "continued growth in casualty" business. But he doesn't foresee the same for property lines and even foresees licensed carriers penetrating that market.

Northbrook estimates the 14,000 policies it writes represent 10% of the excess/surplus industry, assuming an industry volume be-

Continued on page 12

What's in a risk?

What's in a submission to an excess/surplus underwriter? Everything.

Northbrook Insurance Co. president Jorgen Ravn-Hansen said a property insurance submission, which as a rule is easier to handle than a casualty risk, contains information on engineering, loss experience for the last five years, detail as to the location's relationship to potential natural disasters such as earthquakes and windstorms and the kind of manufacturing involved, to name a few.

The submission can be a couple pages or a half-inch thick, depending on the complexity of the risk.

For an umbrella casualty program, which Northbrook writes a lot of, it could take days just to gather all the necessary information. All the company's manufacturing concerns have to be known, all its products, past experience, nature of lawsuits and its financial situation.

"There's no such thing as a standard submission," Mr. Ravn-Hansen said. "Everything is different." ■

The company view . . .

Continued from page 11

tween $2 billion and $2.5 billion in premiums. But business done in London is unknown, Mr. Ravn-Hansen pointed out.

Columbia Casualty, with 3,000 casualty clients and just 15% of its business in property insurance, estimates it carries 7% to 8% of the U. S.-underwritten excess/surplus volume, excluding London.

Northbrook was looking at so much business it recently instituted a six-week moratorium on new submissions. Although the moratorium is now over, Northbrook allocates the number of submissions it will accept each month from wholesalers. The company has also reduced the number of wholesalers it works with to 117 offices of 57 entities from 370 offices of 240 entities in 1975.

The marketing slowdown at Northbrook, however, was strictly a servicing problem, not a capacity crunch. "We just found ourselves overloaded with work. . . . It was a service problem. We could not staff properly," Mr. Ravn-Hansen said. The staff is now at 140 "and still growing," he stressed, with 22 underwriters, two-thirds in casualty.

Columbia Casualty, with a staff of 60, declines to write half of the submissions it receives, Mr. Prather said, though he characterized this as the result of the normal risk selection process. The CNA subsidiary does business with 50 wholesale brokerage firms and three New York City retail brokers, Alexander & Alexander Inc., Frank B. Hall & Co. Inc. and National Brokerage Agencies Inc. (However, National Brokerage considers itself a wholesaler.)

The three New York City brokers are exceptions to the wholesaler rule, Mr. Prather said, because wholesalers in New York are not as used by the major houses as in other cities. Northbrook works strictly with wholesalers, Mr. Ravn-Hansen said.

Neither president will consent to working directly with a risk manager, preferring the retail and wholesale brokerage system. Both, however, say risk managers often accompany their brokers for negotiations, which is acceptable to the presidents and even helpful on a particularly complex risk.

The two Chicago-based excess/surplus underwriters have carved different niches for themselves in the excess/surplus realm. Northbrook underwrites insurance for half the Fortune 500 companies. Although disclaiming that Northbrook has a preferred type of risk, Mr. Ravn-Hansen said Northbrook is biggest in writing umbrella coverage for industrial manufacturers, gravitating to the medium to large accounts.

Columbia Casualty's willingness to write both buffer layers and umbrella coverage for its clients makes it unique among excess/surplus underwriters. "We are predominant in the buffer layer business. It's a large percentage of our business and almost 50% of our business is umbrella. We're the only ones doing both buffer and umbrella," Mr. Prather said.

While other underwriters shy away from the active buffer layers—and Northbrook doesn't write any—Mr. Prather said Columbia Casualty decided "we wanted our market to offer coverage in all areas." And, he smiled, "there's an attractiveness in the working layer."

Both underwriters, though avoiding development of a class of business, steer clear of certain risks. Northbrook doesn't write railroads, aircraft products or nuclear liability risks but will write property insurance for railroads. Columbia Casualty won't write liability insurance for railroads, malpractice, professional liability, pharmaceuticals or unusually hazardous chemical risks. Nor will the company write ocean marine or railroad property insurance.

EXCESS/SURPLUS and special risks

But there are other markets for these risks, Mr. Prather says, and neither company president sees any capacity problem in the excess/surplus industry.

Mr. Prather has detected some movement into the excess/surplus market here by both domestic and foreign companies. Mr. Ravn-Hansen says there hasn't been as much development of new markets as he would like to see. "We'd love to have good, professional, responsible competition," the Northbrook president said.

Both presidents radiated delight in their work. Mr. Ravn-Hansen, formerly director of reinsurance with Allstate, said, "The excess/surplus field is highly individualized, with a sophisticated approach to underwriting. Every day new things are developed. A lot of imagination is required."

Mr. Prather, who moved to Columbia Casualty from national accounts with CNA, said, "It's been an exciting time to be in the excess/surplus business."

And there's no ebb in sight. ■

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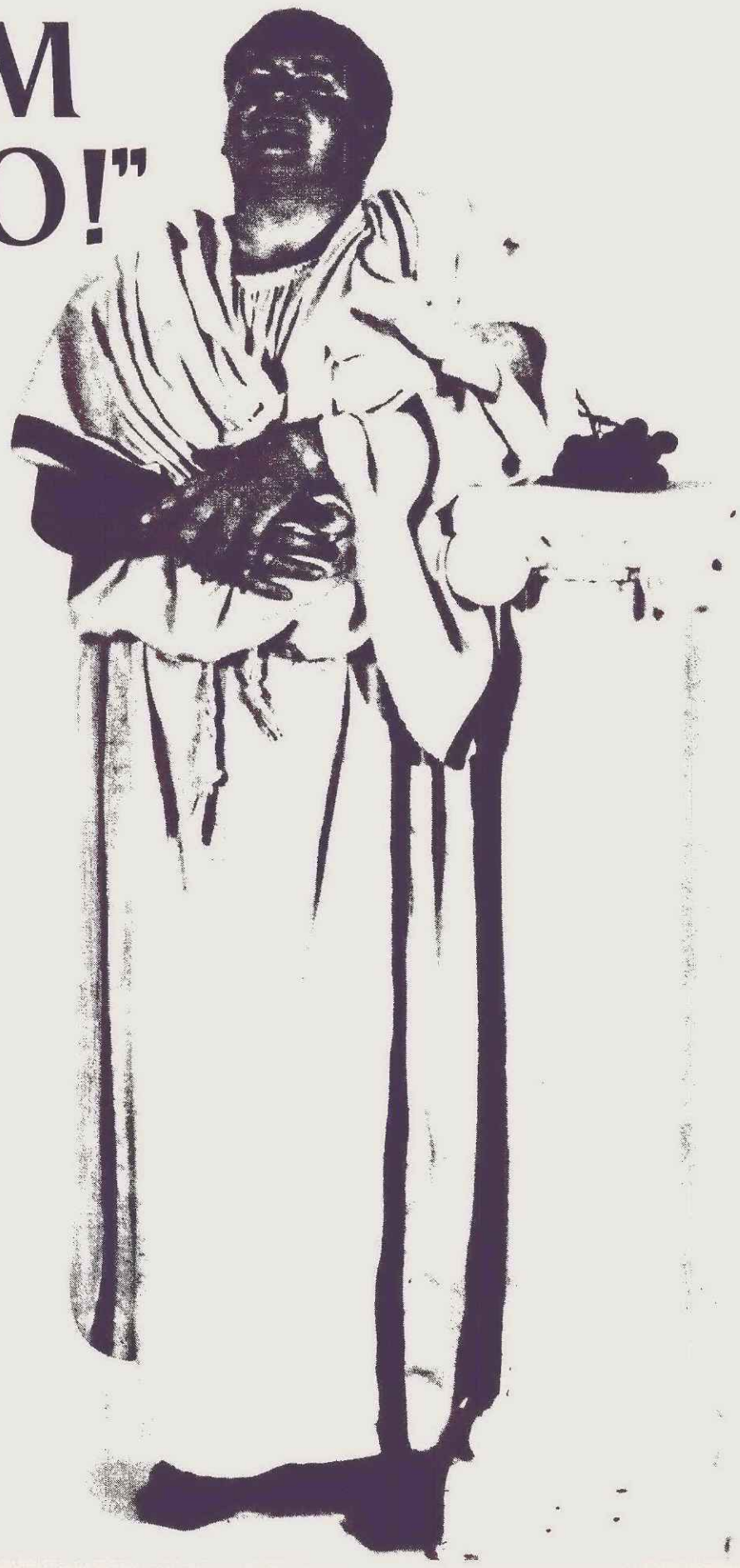

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Excess market . . .

Continued from page 11

mium for coverage under such a plan because they aren't convinced that the corporation won't let the claims escalate into the excess layers, the risk manager added.

Although insurance buyers can anticipate some easing in the excess and surplus markets within the next several months, their optimism may be offset by two factors.

Problems remaining unresolved are a shortage of surplus for excess and surplus underwriters and a shortage of company underwriting personnel, according to Mr. Pearson.

Capacity in excess and surplus markets can't rapidly expand because an underwriter can only write business in proportion to the amount it has in uncommitted or free backup funds, and this surplus has been forced into a downward trend, Mr. Pearson explained.

Inflated premiums have only aggravated the problem of limited surplus and shrinking underwriting capacity, according to another broker, Mr. McAlear. Since each risk is written at higher premiums, the underwriter uses his surplus for fewer and more expensive risks and his capacity for other risks becomes more limited.

This market constraint has led to a situation where the underwriters can "pick and choose what they want to write" and can "increase rates and still write all the coverage they want," Mr. Bloom said.

The higher primary limits that the excess and surplus underwriters are demanding is another serious problem, according to several specialized excess and surplus brokers.

At the same time excess insurers are demanding higher primary limits, primary underwriters are reducing their limits for primary coverage. A gap results, which requires more buffer layers of insurance.

"This means that now two markets instead of one must be approached in order to obtain an umbrella liability policy because the buffer layer must be placed before the excess can be placed," Mr. Bloom said.

Some excess and surplus underwriters are demanding a higher primary limit because a $1 million loss used to seem remote but is now almost considered routine, according to Don Cherry, insurance manager at Sperry & Hutchinson.

Sperry & Hutchinson itself has learned to cope with the higher primary limits required. When the company renewed its primary coverage last January, Mr. Cherry said he raised the primary limits from $300,000 to $1 million.

"It used to be that low limits were required in the primary markets, but now it has swung around because of the high awards in product liability cases," Mr. Cherry said.

EXCESS/SURPLUS and special risks

Continued rate increases up to 400% and 500% for three-year umbrella liability policies are another trend risk managers should expect.

Even firms that produce and sell relatively low-risk products can expect huge rate increases. For example, Pillsbury Foods experienced a 200% increase when it renewed its three-year umbrella liability policy.

Howard H. Helburg, director of corporate insurance at Pillsbury, called it a "reasonable increase in comparison to other companies."

Sperry & Hutchinson Co. also experienced rate increases upon renewal of its excess liability insurance. The rates were eight times what they were three years ago, according to Mr. Cherry.

Risk managers are also finding that it takes longer to negotiate coverage. Pillsbury Foods' coverage wasn't renewed until the evening before expiration.

"It's a seller's market and they don't care if they have business or not," said Mr. Helburg of the insurers' attitudes.

Most specialized excess and surplus brokers agree that the rate increases and limited capacity are the result of the increasing number of high product liability awards.

"It's the courts that are putting the small companies out of business, not the insurance companies," said Don Stall, risk manager at Battelle Industries in Columbus, Ohio. ■

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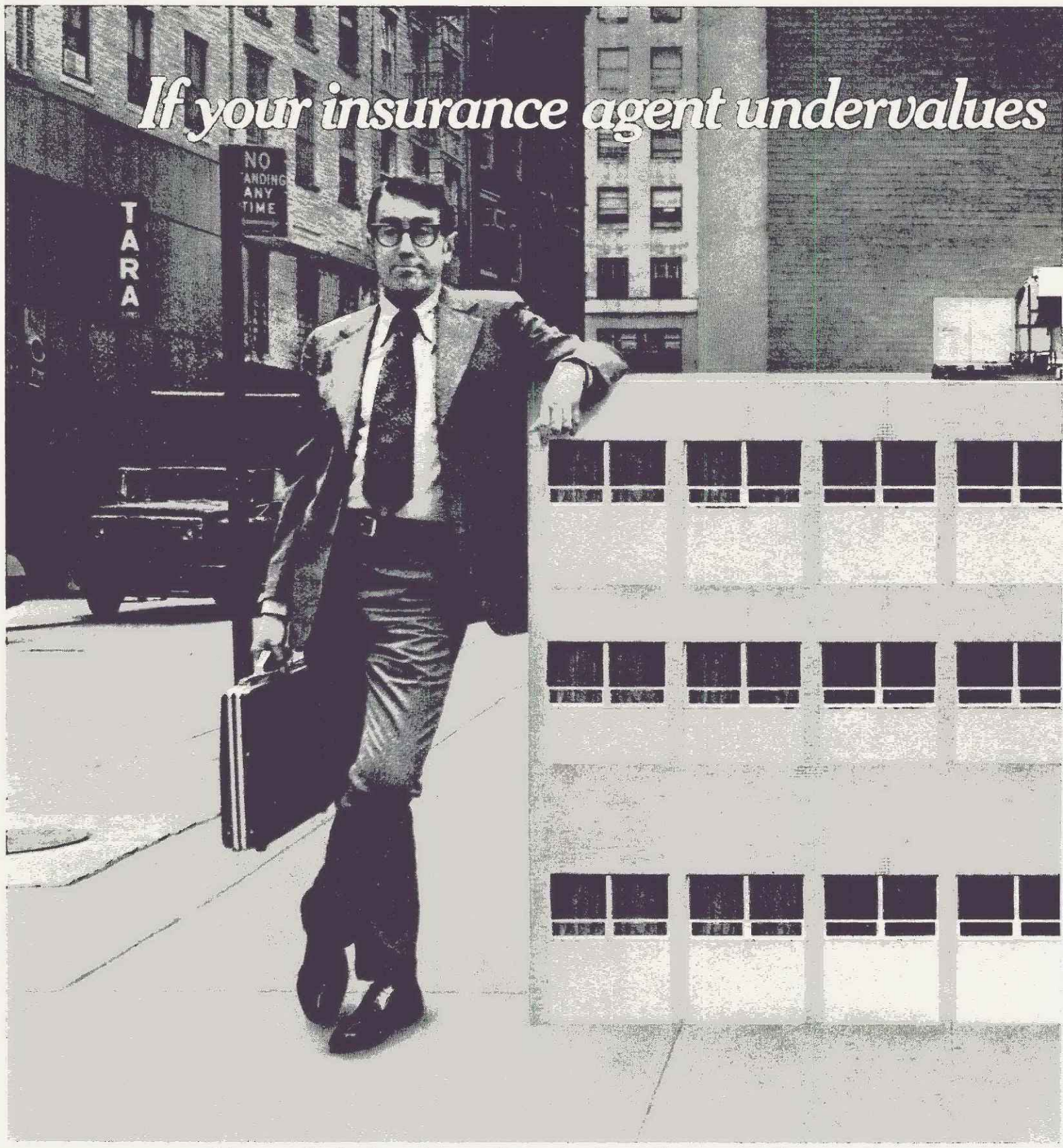

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But everyone doesn't agree

Regulators fear new abuses in excess markets

By REBECCA A. FANNIN

NEW YORK—More regulation of the excess and surplus markets has been proposed as several state insurance departments question whether they need more policing power to prevent abuses and financial insolvency problems. But not everyone agrees there should be more regulation of these markets.

The insurance departments wanting regulation may get some help if a bill proposed by Sen. Edward Brooke passes. The bill calls for limited dual regulation of insurance companies, among them alien surplus carriers.

Under a provision of the bill, a Federal Insurance Commission would be authorized to issue charters to alien insurers who are maintaining trust funds of not less than $50 million in the U.S.

Regulation under the bill would be "very loose since it lacks specific guidelines," said James Ryan, head of the non-admitted insurance office at the National Assn.

EXCESS/SURPLUS
and special risks

of Insurance Commissioners (NAIC).

Although NAIC already monitors alien (foreign) carriers by checking their financial reports and reputations and individual state regulators check domestic companies and regulate surplus brokers, the efforts haven't always been adequate.

"A lot can go on with these companies that isn't reflected in their reports," said James Flanagan of the New Jersey Department of Insurance.

"This is a readily vulnerable area for organized crime," Mr. Flanagan said, adding that "attempts to set up dummy companies in Brazil and Mexico have been traced to organized crime."

He said a company can get a license to operate in a state that has a weak insurance department. Then it can branch out into other states.

States "don't get much cooperation from the home state when checking a carrier's financial status. Then they're left holding the bag."

Even in the home state, or the state where the carrier is domiciled, problems are apparent.

The Wisconsin Insurance Department "wasn't caught totally surprised" when its domiciled All-Star Insurance Corp. liquidated in 1976, according to Lou Hannis, director of the property and casualty bureau in the Wisconsin department.

But Mr. Hannis said "we need to see things coming more quickly than we did. We need to have a better process of getting a better picture of their finances and steps to prevent another All-Sar. We used every regulatory power we could think of but obviously it wasn't enough because in this case it didn't work."

"In retrospect," he continued, "we hope to have learned something from this which may lead to improved regulations and teach other states."

For other states, the problem is not one of preventing insolvencies, but just keeping track of the business written.

"Some of the business slips through that we don't know about," said Etta Credi, supervisor of the financial regulatory division of the Illinois Department of Insurance. The department is losing policing power over a sizable amount of business, she said. This occurs because business is sent by brokers in the state to out-of-state managing general agents who aren't surplus lines brokers.

In California, closer scrutiny is being paid to companies that prefer to do business on an excess and surplus basis and don't want to become admitted, according to John Faber, assistant chief legal division of the insurance department. "We want to keep track of these companies," he said.

When dealing with alien or overseas companies who operate in their states, most insurance departments get aid from NAIC through the non-admitted insurance office.

The office is headed by Mr. Ryan, a CPA, who compiles a list of acceptable alien companies. The acceptance of a company is determined by two basic criteria: a surplus of capital amounting to $1.5 million and a trust account amounting to $500,000. Loss reserves, premium reserves, premium/surplus ratio and the company's reputation are also examined.

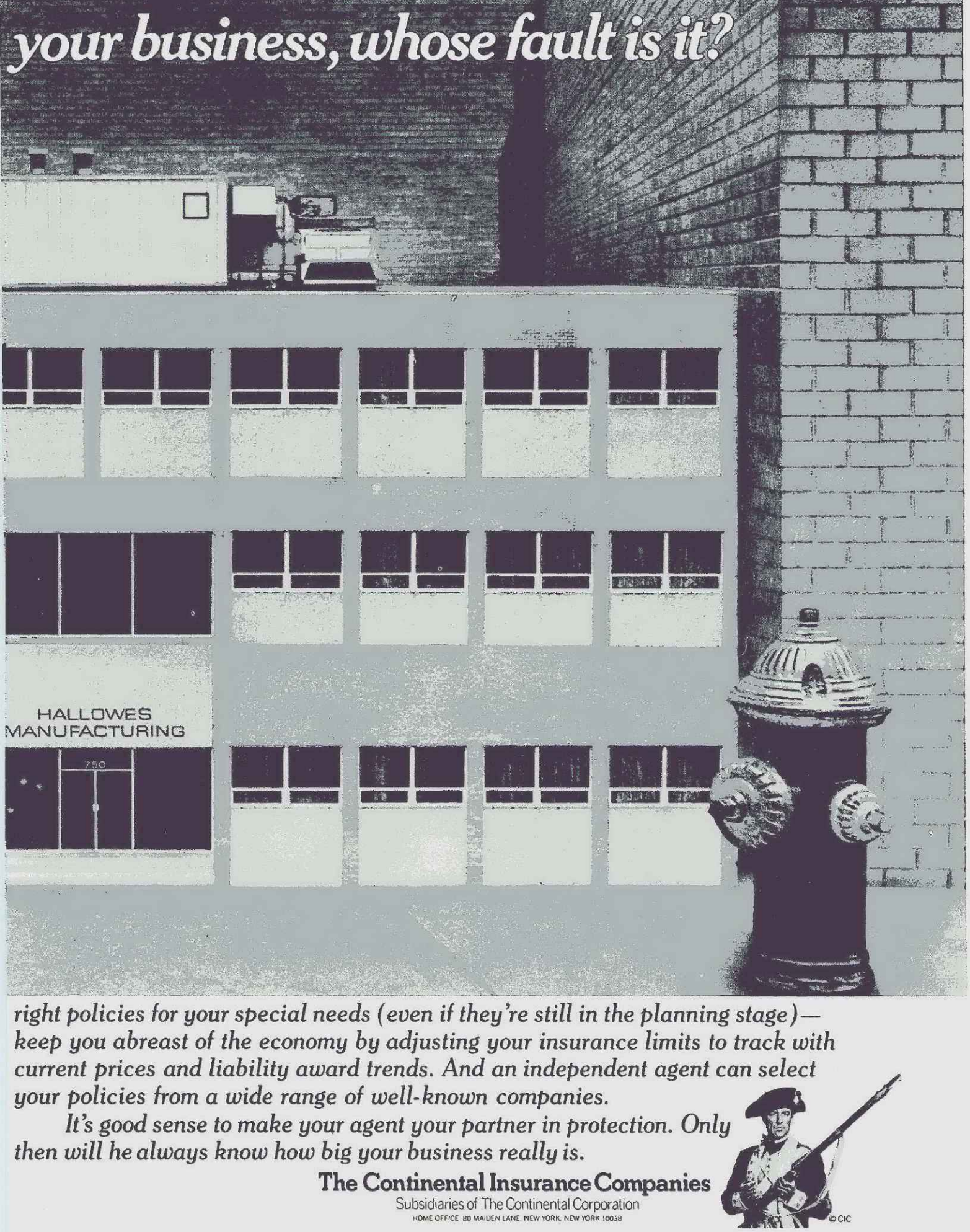
Out of 220 alien insurers in the U.S., 110 are on the list. Most of those carriers off the list haven't applied for listing, Mr. Ryan said.

Since last December, Mr. Ryan has refused two companies admittance to the list. One company was refused because it had $500,000 to $1 million in surplus, which Mr. Ryan said was inadequate for the high liability lines it was seeking to enter.

"We'd like to see their underwriting projection hold true before we admit them," he said.

Approximately 35 states use the

Continued on page 16



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Regulation . . .

Continued from page 15

approved lists and three to four states use it as provided by statute, Mr. Ryan said, adding that an insurance commissioner would be curious why a company wasn't on the list.

For domestic companies, some states compile their own aproved list. Illinois' basic criteria for listing are a capital/surplus ratio similar to the admitted market and a trust account worth $33,000.

If a broker places a risk with a company not on the list, the insured must sign a statement that he knows that the carrier isn't on the qualified list.

In Illinois and some other states, another regulation says the commissioner may request from any surplus lines broker full information regarding the financial stability, reputation and integrity of any non-admitted insurer.

The commissioner can also order the broker not to place any more insurance with a non-admitted underwriter. If the licensed broker then puts more business with the carrier, he violates surplus lines laws.

Despite the feeling that more control of the markets is needed, the state insurance departments of Texas, California and Illinois said they don't have many problems with their surplus carriers.

"We've been pretty lucky that we haven't been caught with as much bad business as other states," said Phelps Cole, director of the excess and surplus lines department in Texas.

When the Texas department isn't satisfied with a carrier's operations, Mr. Cole said, the carrier is called in for a conference, where the problems are worked out gradually.

While Mr. Cole admitted that "there is always a possibility that more legislation might be petitioned if things got out of hand," he said "so far we haven't felt that it's necessary."

Mr. Cole gave credit to the Texas Surplus Lines Assn. for self-policing the carriers and brokers and for the cooperation between the association and the insurance department.

California, which also has a surplus lines asociation that monitors their business, also hasn't had problems with carriers, according to Mr. Faber of the state insurance department.

"We have had sufficient early indication of a carrier's problems by reviewing annual statements of the carriers and we have forewarned the brokers of problems," Mr. Faber said.

He added that his department "stays pretty close to the non-admitted market—almost as close as to the admitted carriers." A surplus lines carrier must have $2 million in surplus or his department will advise that the broker not use the carrier.

Mr. Faber said the risk of dealing with an alien carrier is less because usually alien carriers spread the risk. They may only take 1% to 2% of the entire risk so it's not as great a problem for the policyholder when an alien carrier goes bankrupt.

Ms. Credi said the Illinois department's "good housekeeping list" of surplus carriers and the department's requirement that the broker must have three declinations from a standard market have given the department a "pretty good handle" on the business.

No strict enforcement powers over the excess and surplus market exist, and the NAIC hopes to keep it that way.

"The excess and surplus market's greatest strength is that it doesn't have the many regulations to follow that the admitted market has," said Bob Demeen of NAIC.

"We have a well-defined pattern on how to deal with the problem and we can't be too sticky because the regular market couldn't provide coverage," Mr. Demeen said, "so we don't want to create more problems in the placement."

Referring to the current regulation system, Mr. Demeen said, "If it ain't broke, don't fix it." ■

Storm losses

Insured losses of $3 million are estimated from a severe storm which swept through Wisconsin on Aug. 31, according to the American Insurance Assn. The heaviest damage was in the vicinity of Wausau.

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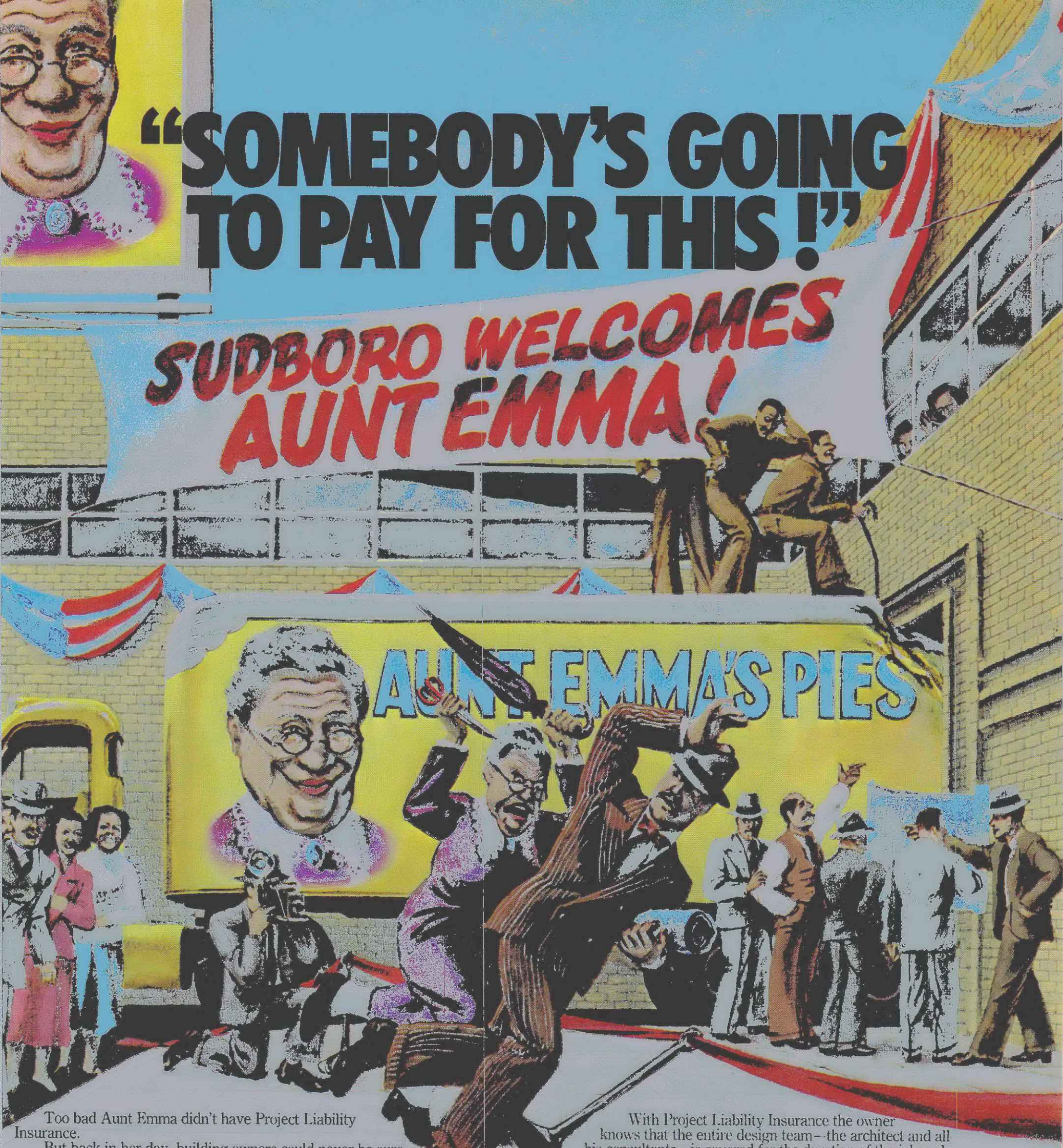

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Captives enter expanding buffer area

RAYMOND M. LANE

NEW YORK — Captive insurance companies are beginning to enter the buffer layer business as worldwide demand for insurance protection continues to rise.

Buffers are layers of coverage that pick up the difference between primary policies, which have shrunk dramatically recently, and where excess coverage begins. Demand is so keen for such lines as casualty and product liability that buyers are scrambling to buy almost anything they can get.

Participation by captives in this market is relatively new. Traditionally, captive insurance companies have served as vehicles for a firm to insure its own risks.

Tax avoidance or delay is the key to the captive interest in writing outside buffer layer business. That's because buffer layer business is the most vexatious area of insurance coverage. Predicted and catastrophic losses are easy.

But casualty and product liability coverage is a different matter. Generally, the experts count on a loss event every five to 10 years. Thus, if the loss is

EXCESS/SURPLUS
and special risks

insured in an offshore captive, it can be fully funded, avoid taxation until the loss—in which case taxes would decrease proportionate to the loss—and still allow the firm to use its reserves.

A leading captive insurance specialist puts it this way: "There's no question but that writing buffer layer business is the coming thing. It's the best way to cover special high-risk situations and captives are especially suited to guarantee the best possible use of funds."

The cost of buffer protection can be prohibitive, however. "It can be anywhere from 20% to 100% of indemnity, according to the risks involved," said one local expert. "And some medical malpractice coverage is more than 100%," he added.

Despite the cost, buyer interest in buffer layers is reported to be intense. "I've seen more business in the past three months," reported one Bermuda agent, "than in the previous two years. Clearly, our capacity is far from sufficient to meet the demand," he said.

There are only eight or nine captive concerns said to be underwriting buffer layers. One successful mechanism used to increase their capacity is to unite captives into a consortium pooling arrangement. The surprising profitability of captive insurance companies allows managers to use the combined assets in the highly profitable buffer layer business. In addition to allowing managers continued use of the money, it protects the members' income from taxation.

The interest of captives in writing buffer layer accounts still remains far behind demand, notes one prominent insurance consultant. "What we're seeing now is just the 'first money' from the captives," he declares. "In the next few years, as their capacity grows and their interest and expertise catches up with their appetite, you'll find more and more captives writing high-risk business."

One Bermuda captive executive agrees, "There's just too much money to be made for us to keep out; anyone with any guts can enter the market and make an arm and a leg. The buyer'll pay anything."

Many captive managers are watching to see the results of their colleagues' first entries into the buffer layer market. "The risks are too great," observed one captive manager, "for us to jump right in. We see the need, of course, but the kinds of insurance being sought are most unpredictable."

That seems to be the complaint of many analysts. The problem, as they see it, is a complete lack of predictability. Casualty payments are skyrocketing, they complain, as juries side more and more with litigants against insurance concerns. "It's not that the cost of a broken leg has gone up that much," muses one industry insider, "but that the courts and attorneys are caught up in a 'social inflation' mentality."

Social implications notwithstanding, said one Bermuda captive specialist, the cost of insurance protection is very real to those who must purchase it. Excess insurance premiums of $80,000 annually a few years ago approach $250,000 today, he noted.

"The only bright spot on the horizon for firms seeking to protect themselves against high-risk losses," he concluded, "is the entry of captives into the buffer market." ■

But prices are high, market tight

Retentions key to excess for municipalities

By KATHRYN McINTYRE ROBERTS

CHICAGO—Touting a reasonable self-insured retention or a primary insurance policy, municipalities usually can find the excess insurance they need.

They just may not like the price, underwriters and brokers agree. Especially expensive and a scramble to buy is the first layer of excess, or what is commonly called the buffer, and anything up to the first million dollars.

A first reaction of many when asked, "How's the market for municipalities?" is a quick intake of breath followed by a deep sigh. In the end the consensus appears to be that the insurance is there—at a price.

"The excess/surplus market for municipalities is not that difficult, contrary to what you may hear," said Patrick T. Moore of Worldwide Facilities Inc., a leading surplus lines house in Los Angeles which handles a considerable amount of business for public entities. "The prices are high though, and increasing, and the market is shrinking," he said.

It's just not the good old days before juries found governments liable for accidents due to road design and before they freely turned over the insurers' money to the claimant, or before citizens looked to their government for a source of funds to be tapped after an unfortunate incident.

As one broker observed, "People are mad about their taxes, Watergate and government in general. They want to get on the gravy train too."

But while city managers, mayors and county executives hold their heads and wring their hands over insurance renewals, not everyone is sympathetic with their plight. "Cities have forced this on themselves," said Mr. Moore, who speaks from 25 years of experience in municipal insurance including heading up Pacific Indemnity's public entitles program.

EXCESS/SURPLUS
and special risks

"Public entities have looked at insurance as a way of picking up the bills. They haven't cooperated with insurers on safety recommendations or on controlling losses," Mr. Moore charged. "But that's changing," he continued, because many public entities are assuming growing retention levels and paying the bills first themselves. So they are now more safety conscious, more concerned with losses and are even hiring risk managers.

The field of excess/surplus underwriters that can be interested in a public entity's business depends on the primary insurance arrangement, geographic location and, in some instances, who is plucking the market.

The primary insurance market for municipalities is a disaster, the experts agree. Though some can still find primary coverage, many are turning to increasing the risk they retain.

Some excess/surplus underwriters are said to be reluctant to write over a self-insured retention—the burning lawyer, one consultant called it. Admiral Insurance Co. is widely known in California for taking the first $300,000 over a $50,000 to $100,000 retention.

Northbrook Insurance Co. and Columbia Casualty Co. both said they will underwrite risks over a self-insured retention, though client-managed claims handling is forbidden and the reputation of the claims administrator has to be established and recognized. In addition, Northbrook writes only umbrella coverage, but Columbia Casualty specializes in the buffer layer too.

The smaller its self-insured retention, the harder the public entity will find it to crack the excess/surplus market. With a $500,000 retention, a public entity can expect three or four companies to quote on its business, Worldwide Facilities' Mr. Moore said. Push that to a $1 million retention, and the field may grow to 10 companies, he suggested. That is, if there is no dam involved.

But while an excess market exists for true excess insurance, municipalities looking for primary cover from non-admitted

Continued on page 20

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Municipalities . . .

Continued from page 19

carriers will be as disappointed as they have been in the licensed insurers' market. Admiral Insurance Co. was mentioned as one excess/surplus company writing primary for muncipalities.

Geographically, everyone agrees California is the tight spot in the nation for public entities to find insurance. Self-insured retentions are steadily increasing and the City of San Diego has decided to assume all its liability risks. Florida is often mentioned as developing a bad reputation among insurers.

Though everyone can tick off names of public entities going bare, it appears that is often a chosen alternative to paying the price asked by insurers. (There is also agreement that public entities enjoyed underpriced insurance for too long.) "If it gets desperate enough, someone will force a favor to preclude dire catastrophes," Los Angeles broker Mr. Moore said.

Talk of new municipal margets, then, may be generated by the decisions of insurers to write one or two risks as an accommodation to a producer.

Big excess/surplus underwriters of municipalities include Admiral Insurance Co., First State Insurance Co., George F. Brown and Northbrook. Employers Reinsurance of Kansas City writes it, but only a few at high limits.

Two of the companies contacted by *Business Iinsurance*, Northbrook and Columbia Casualty, downplay their activity in municipal risks.

Northbrook vp of casualty Richard Foss said, "We write some umbrella on property and casualty." Columbia Casualty's president Wayne Prather said municipal business this year will account for only 2% to 2.5% of the company's $100 million premium volume.

Columbia Casualty has been accused of virtually pulling out of the municipal market, not with an announcement but by issuing extremely high quotations on new business and renewals. Mr. Prather countered that the company doesn't view the market situation in California, where it previously did most of its municipal business, as bad this year as last.

As a result, the company is spreading its underwriting of muncipal risks around the country. "We'll do the same dollar volume as last year. We're not pulling out and we still write new business all the time so our prices have not shut off the volume," he said.

> 'If it gets desperate enough, someone will force a favor to preclude dire catastrophes.'
>
> –LA broker Patrick Moore

Everyone agrees excess/surplus insurance prices are high for public entities, but no one can say how high because no two public entities are alike. Ballpark figures are meaningless, experts say.

The diversity of risks among public entities is one of the reasons often cited for insurers' aversion to them. Public entities operate fire departments, police departments, streets and sanitation departments and more and more public recreation facilities, all of which spell high frequency and severity to underwriters.

Among the biggest hazards is the "trip and fall on the city street," a type of accident once settled for $50 and now commanding $1,000 to $2,500, said Dan Huggins, Chicago regional vp of R. L. Kautz & Co., claims administrators.

Use and design of highways is another favorite basis for lawsuits, said Worldwide Facilities' Mr. Moore. Victims of highway accidents, realizing their automobile insurance won't cover their medical bills, turn to the public authority to pick up the tab—and then some. The erosion of public immunity laws has made the most impact on these cases, said Mr. Moore.

Municipalities also haven't endeared themselves to underwriters with their tendency to bid their insurance business. If each year a public entity throws its insurance to the company with the lowest bid, an insurer who has suffered a loss one year and wants to recoup it the next will loose the business to an insurer who chooses to ignore the loss on its bid. Insurers like long-term relationships, which are precluded by the nature of the bid process.

But municipalities are apparently realizing that buying insurance requires a different tact than buying a new truck and are now moving away from bidding it.

Insurers, on the other hand, have something to learn about public entities, Mr. Moore suggested. "One of the peculiarities that very few companies understand is loss development on municipal risks. It takes seven years before you know if you've made money," he said. So the first few years it may appear that a company is making nothing but money on its municipal business.

Excess workers' compensation insurance is generally more easily marketed, it appears, but market conditions vary with the state's law and benefits.

Public entities which are increasing their self-insured retentions can't expect to cover themselves with aggregate stop-loss policies. They are nearly impossible to obtain, industry sources agree.

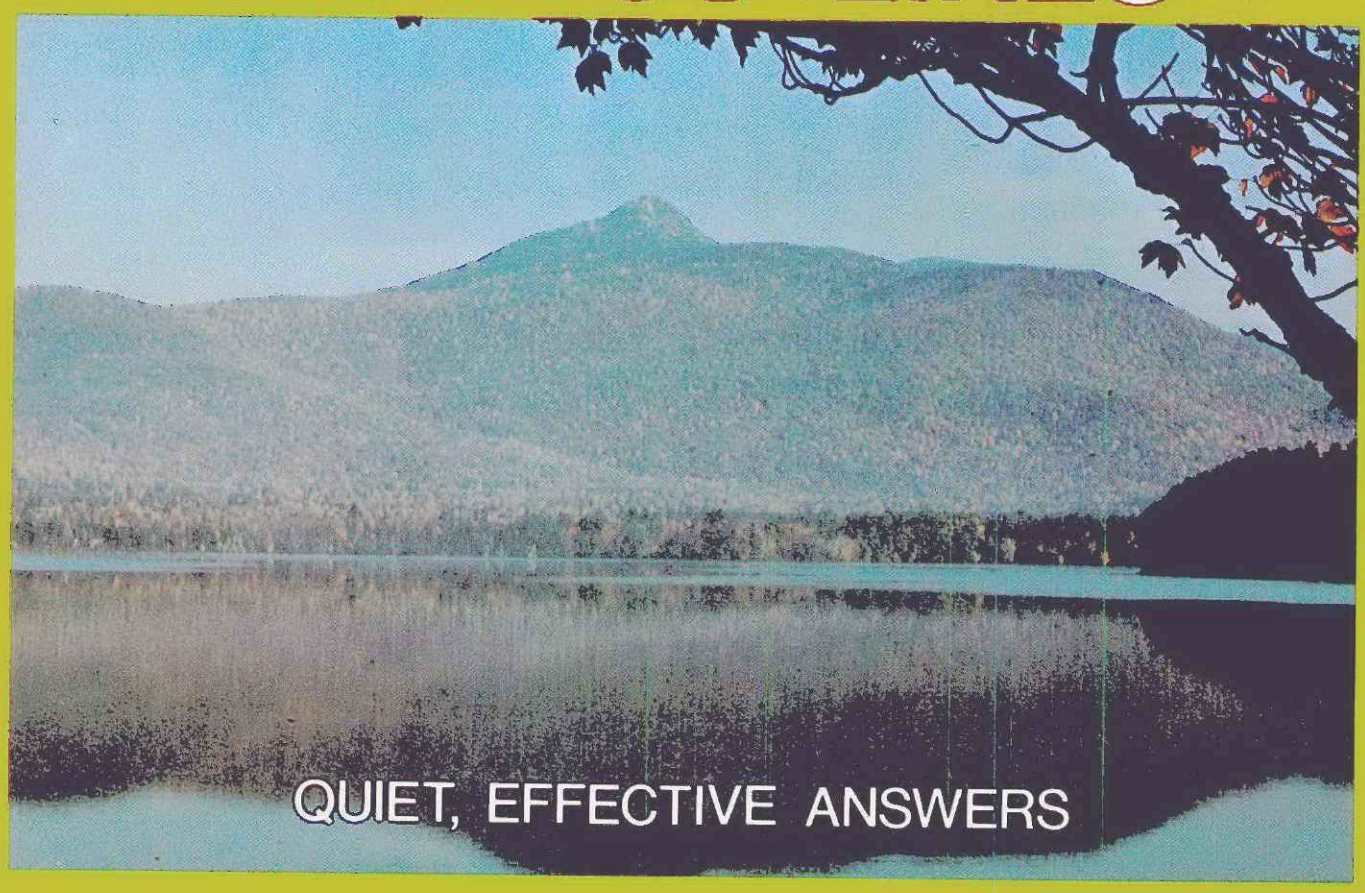
No one is forecasting with any certainty a change in the excess/surplus market for municipalities. One consultant said, "I heard there will be some easing next year, but we've heard that before."

Mr. Moore says he sees "little prospect of market improvement." He believes the larger public entities will always be able to find insurance by steadily increasing their self-insured retentions. "The ones I feel really sorry for are those like the beach resort communities that are finding the market more difficult."

For the future, Mr. Moore sees the market conditions forcing insurance back to covering catastrophes and normal business going back to the city, "as it should be."

It's just that for so long, cities didn't look at liability as a normal business expense, except as a tolerable line item for an insurance premium in the annual budget. ■

SURPLUS LINES



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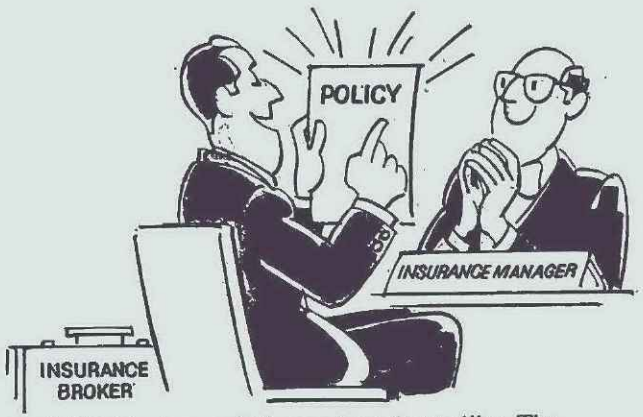
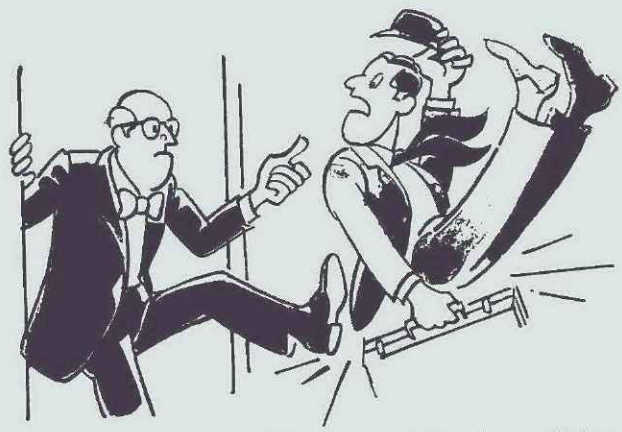
The sad history of an insurance broker who sold a fiduciary liability policy based on price.



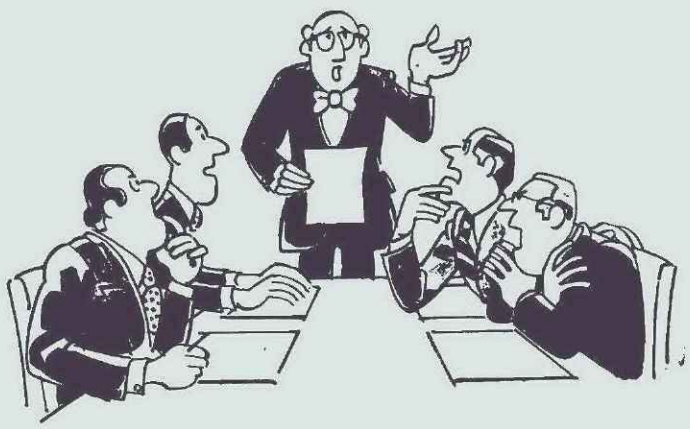
1. "All Fiduciary policies are just about alike. The differences are insignificant. With this one, the price is right and you'll save a few bucks too."

2. "Glad I bought that Fiduciary Liability policy. It gives my company just the protection it needs."

3. "What do you mean it's excluded? Do you realize what this means? Now I have to tell my Board of Directors and everyone else named in the suit that we have no coverage."



4. "You're the guy who told me that all Fiduciary policies are just about alike. I depended on you as my expert. You had better report this to your E & O carrier. We aren't going to stand for a loss. Especially when it was *your* fault."



5. "Gentlemen, I'm sorry but it looks like you're stuck for an uninsured loss. We depended on our broker's advice and apparently, he was wrong."

6. "Would you send someone down to review our entire account? We just had a Fiduciary loss which wasn't covered by the policy sold to us by our old broker. Our premiums are substantial and we're looking to have another broker take over the entire account."

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California excess lines zoom; hospital malpractice leads pack

By MARGARET LeROUX

SAN FRANCISCO—"California is a hotbed of surplus line activity," says Bruce C. MacCready, regional vp of excess and surplus line at Aetna, Cravans Dargan & Co. Figures released by the Surplus Line Assn. of California support his enthusiastic assessment: The volume of business written by excess and surplus line underwriters in this state more than doubled, from $77.5 million in 1975 to $160.9 million in 1976.

The biggest increase was in hospital malpractice, from $4.5 million total premiums written in 1975 to $19.9 million in 1976. Excess premiums for business interruption and property damage policies increased from $6.9 million in 1975 to $19.3 million in 1976. Excess umbrella premiums increased from $7.1 million to $20.1 million in 1976.

The excess market for fidelity and surety coverage in California surged in 1976 from $41,372 total premiums written the previous year to more than $3 million. Errors and omissions premiums for attorneys written in the non-admitted market increased too, from $358,158 in 1975 to $3.1 million in 1976. Another class of errors and omissions business that saw increased activity in the excess market here last year was agents and brokers: $1.7 million total premiums were written compared to the previous year's total $308,825.

Since a state tax of 3% is levied on all surplus line writings, California received $4.8 million from the increased underwriting in the excess and surplus market in 1976.

"The excess and surplus line business is a capacity home when there's lack of capacity in the admitted market," said A. L. Lathrop, manager of the Surplus Line Assn. of California.

"I expect the total surplus line underwriting to eventually level off; we've seen improved loss ratios for most underwriters this year," he added.

California's Surplus Line Assn. keeps especially close tabs on the excess market because it provides a stamping office facility to receive, examine and pass on filings received from surplus line brokers in the state.

Shortly after passage of California's surplus line law in 1937, the insurance department found it was not staffed to handle individual risk evaluation and asked the association to handle the responsibility, Mr. Lathrop said. Since 1939 all surplus line policies have been sent to the association's office.

"We check each filing to see if it meets the requirements of the surplus line law," the association manager said. The two primary requirements are that the insurance is not available from a majority of admitted insurers qualified to write it and that the insurance is not being placed with a non-admitted insurer to obtain a lower rate or premium than quoted in the admitted market.

Besides enjoying a close, cooperative relationship with the insurance department, Mr. Lathrop said, the association frequently consults with surplus line brokers about non-admitted markets.

The association publishes an annual review of alien non-admitted insurers which contains financial statements of companies and gives premium and surplus totals. The review is sent to all surplus line brokers in the state.

In addition, the insurance department publishes an annual financial review of all the U.S. non-admitted insurers writing business in California.

"We don't have a white list or a black list of either American or alien non-admitted insurers, like other states," Mr. Lathrop said. "We neither approve or disapprove of any non-admitted insurance company."

The data is there for surplus line brokers to use in making their decision of what market to use, he explained. "The broker is the one who chooses the market."

Until 1970 more than half the total premium written in the excess and surplus line market in California was by Lloyd's of London or other United Kingdom companies. Since 1971 the involvement of U.S. non-admitted insurers jumped from little more than 6% to more than 14.5% and has steadily increased to a 41.4% share of the total premiums written in 1976.

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and special risks

While the percentage of excess and surplus business written by Lloyd's has decreased, the total premium has almost doubled in the past two years. According to the Surplus Line Assn., Lloyd's excess and surplus premium in California for 1975 was $28.1 million, 36.9% of the total premium written in the state. In 1976 Lloyd's share of the premiums was down to 31.9%, but volume totalled more than $50 million.

Mr. Lathrop noted increased activity in the excess and surplus market from other foreign countries, especially Japan. "However, a lot of these companies are U.K. subsidiaries of Japanese companies," he said.

"London is still the center of the excess market," he continued. "Lloyd's is still the leader, despite the activity in the American market."

The association manager also noted an increase in the number of brokers who have qualified for a surplus line license in recent years. There are more than 250 surplus line brokers in California. To get a surplus line license a broker has to pass a special exam administered by the insurance department and pay a fee of $200. Next Jan. 1, the bond which is also required will be increased from the present $20,000 to $50,000. ■

How people pick life insurance

WASHINGTON—How do you decide how much life insurance protection you need?

That was the question put to people interviewed in a recent national survey by the American Council of Life Insurance. Some 50% said they based their decision on what the breadwinner could afford.

Some 39% felt the amount of coverage should be based on what is needed to make a family self-supporting. The rest, 11% said they would opt for "the minimum needed for final medical and burial costs." ■

Health plans self-insure, stop loss booms

RAYMOND M. LANE

NEW YORK—With more employers self-insuring their accident and health plans, the importance of stop loss coverage has greatly increased.

The trend is so pronounced, one reinsurance executive declares: "If self-insured health plans are the wave of the future, then stop loss coverage is riding the crest."

Indeed, the growth of self-insured health packages among employers has been remarkable since passage of the Employment Retirement Income Security Act of 1974. Under section 514(b)(2) of ERISA, companies found they could establish self-funded health plans and escape the taxes and regulation of state insurance laws. Moreover, the resulting cash flow advantages and cost savings over regular commercial insurance protection have made self-insurance very attractive for many employers.

"The result is a booming demand for self-insurance expertise," said one broker who advises self-insurers, "and increased attention to the benefits of stop loss protection."

The mechanism for stop loss protection of self-insured health plans is easily understood. Basically, whenever predictable losses occur, year after year, a firm might consider self-insuring that risk. An administrative services organization (ASO) is usually brought into the picture to compute the historical losses of the given industry and prepare a chart of anticipated losses. After adjustments for anticipated inflation and a fee, the administrative services organization can provide a client with a projection of future losses. The ASO generally handles the paper work for the plan as well.

> 'Any firm that self-insures has to make money. It saves money and allows a firm to use its own money . . .'
> –Jeff Brougher

However accurate that appraisal may be, the risk manager nevertheless still faces unforeseen losses. Such losses could potentially ruin the self-insured plan and the parent company.

In order to obtain an assurance that future claims liability will not ruin them, self-insurers buy stop loss protection. This coverage begins after a certain percentage of anticipated loss is exceeded. The usual figure is from 125% to 200% of anticipated loss, depending on the industry being covered. The resulting gap between funded loss and stop loss protection is called the "risk corridor," and the self-insurer pays all of that amount.

Most risk managers will buy aggregate and specific stop loss protection, which can cover group or individual catastrophic losses beyond the anticipated loss schedule.

The cost for stop loss insurance depends on the size of the package. For example, small plans covering 500 lives or less generally cost between 4% and 5% of the anticipated loss. Larger, groups with 10,000 lives or more usually pay about one-tenth of 1% of projected losses.

In either case, the stop loss protection will not begin until losses reach a "trigger point," after passing through the risk corridor. From the trigger point, stop loss coverage pays from 80% to 90% of everything.

There are virtually no unlimited stop loss plans. All contracts put a ceiling on the amount the stop loss coverage will pay, in effect, making a stop loss policy similar to a buffer. Typically the upper levels of stop loss will reach from 40% to 50% of the total anticipated losses. Everything over that is uninsured.

Finally, a typical stop loss policy is sold on an annual basis only. Some insurers try to sell multi-year contracts but then the protection becomes something else. Stop loss protection, then, is true insurance, says one industry analyst. "You buy it for a specific period of time. If you use it, fine, if you don't, better."

There are as many variations of the stop loss formula as there are self-insurers. But one element is common to all. "Any firm that self-insures has to make money," declares Jeff Brougher, president of Jeff Brougher Inc. "It saves money and allows a firm to use its own money, an unbeatable attraction these days," Mr. Brougher adds.

Brougher is exclusive U.S. agent for Thompson, Graham & Co. Ltd., a Lloyd's broker. Commenting on the trend toward self-insurance, Mr. Brougher said recently: "We see this movement as a significant long-term development in health coverage here, one that offers employers real advantages over traditional health insurance plans and offers real cost savings."

About 300 prospective new clients a month approach Brougher's seeking information on starting up self-insured health plans, Mr. Brougher said.

Brougher's advice, he said, is to urge prospective self-insurers to find a reputable broker. The larger corporations have no problems, he said. The larger the population the easier it is to predict losses and, thus, the less one needs stop loss coverage. For the smaller corporation, Mr. Brougher said, stop loss insurance is essential, because one cancer patient could wreck a plan. A reputable broker, Mr. Brougher finds, will see to it that a self-insured plan be funded properly and sufficiently protected with stop loss coverage.

Another problem facing self-insurers, one industry analyst said, is that "increasingly we are finding carriers using (stop loss) as a tool to sell life insurance." He added: "There's nothing wrong with that approach, of course, but we're finding that some . . . are writing unsound

Continued on page 24

EXCESS/SURPLUS and special risks

There are some workers Workers' Compensation doesn't compensate.

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When your machines are stopped by an accident, you pay.

A machine jams. A tool slips. A cable snaps. Someone trips. The list is deadly. Because someone can lose a finger. Or an eye. Or an arm. Or a life.

Of course, an insurance company pays the victim or the victim's family. And that's all that matters, right?

Wrong. Just because your employee is covered doesn't mean your business is covered. You see, the cost of an accident to its victim can be terrible. That's obvious. But the cost to your company and its customers is not so obvious. Because these costs are hidden, and they can be devastating.

These invisible costs involve damage to machinery. The repair and replacement of parts. Downtime. The disruption of the work of all employees who are near the scene of the accident. The general reluctance to return to work until safety is assured. And the loss of a highly skilled and expensively trained worker.

It is conceivable that a small scratch to an employee's finger could cost his employer $10,000. Or even more. How? The employee prevents a serious injury to himself by jamming the machine with his wrench. That leaves his hand in working order, but the cost of getting the machine back in working order is considerable.

Where does it end? The insurance industry believes that it should end where it starts. By preventing on the job accidents in the first place.

Our industry believes in the development and strict enforcement of standards that reduce risks. That machinery, buildings, products, and work habits be analyzed, and that safeguards be instituted.

Insurance companies actually offer the services of risk managers and loss prevention experts who can demonstrate the imaginative ways in which accidents can be prevented.

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Stop loss coverage . . .

Continued from page 23
policies, ones that aren't designed for the specific needs of the client."

Other industry insiders agree. "I have the feeling," said one West Coast reinsurer, "that too many agents are presenting self-insurance inadequately. Prospective clients hear only the good and end up with the wrong type of coverage."

"There's no such thing as a free lunch," declares one midwestern leader. "I think too many firms are rushing into self-insurance without understanding completely what they're getting into. Someone is bound to get hurt."

"My biggest concern," Mr. Brougher observed, "is that the whole field is opening up now and the sharks are out to take a bite out of the weak ones." He warned, "The quick-dollar fellows are out to make a killing on risk managers too greedy or too busy to do their homework on self-insurance."

In fact, self-insured health plans are becoming easier to establish every day. Firms with as few as 50 lives or losses totaling $200,000 annually can start one, experts say. The trick is to not become impatient, insiders say, "because if you do it wrong, you'll lose your shirt."

Many industry experts agree that inexperienced operators are setting up ASOs around the country without adequate staffing, experience or capitalization. Recently in West Virginia, Equitable and Lloyd's lost a contract for several thousand lives. The winning bid came from a life insurance salesman who set up an ASO with his secretary. No one could even determine the stop loss carrier, but still the risk managers stayed with the small ASO. "We'll take our chances," the managers said when informed of the potential problem.

Industry leaders say such experiences are rare but could spell trouble. "Already the states are angry because they've lost their premium tax," said one expert. "If the avariciousness of a few agents and the greed of a few risk managers is allowed to continue, I think we'll see in the not-too-distant future moves by the states and perhaps the federal establishment to exercise more control in our industry."

Brougher's confirms that recently a small ASO placed a case in St. Louis and claimed Lloyd's was the stop loss carrier. Not only did they have no claims administration experience to cover the account, which numbered several thousand lives, Brougher's said, but they lied about the stop loss coverage. The fraud came to light when the St. Louis firm angrily inquired why their policies were late in arriving.

One prominent midwestern underwriter reported a small ASO approaching him for a stop loss insurance quote for a client. The client was a large labor union with some 40,000 lives. Investigating the ASO, the underwriter found the organization consisted of one former life insurance agent and two secretaries. He promptly withdrew from any association with the ASO.

Insiders agree that self-insurers need two things in planning a self-funded health plan: a good ASO and the right amount of stop loss coverage. The only way to get this is to do the following:

• Visit the ASO agent's office and see his facilities. "Don't settle for just a visit to your office and forget those fancy restaurant meetings," warns one insider.

• Don't trust computer printouts. One source tells of a large ASO that lied to a customer about its computer operations. They actually administered the account for a year manually before their computer operations were begun.

• Beware of the agent who tries to tie loss coverage to the group life insurance for 15% to 20% more premium. Several large companies like INA and Hancock offer similar plans, but they're not the firms to be wary of. The problem facing risk managers with the undersized ASO or the crooked ASO, on the other hand, is that after binding the carrier and client together to get his fat commission, the agent says 'To hell with the employer's interest.' "

The concensus of leading health plan reinsurers is that self-insurance in the benefits area will rise dramatically in the next few years. Beyond the obvious advantage of ERISA legislation, they cite the general shrinkage in the insurance market as one reason employers are looking at self-insurance. In recent years, many insurance companies lost interest in providing accident and health insurance. Premiums had not kept abreast

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and special risks

of costs, observes one analyst, and the big boys ducked out. Employers have turned to self-funded A&H, noted one eastern broker, to get coverage at a decent price.

In addition, insiders say that the prospect of national health insurance legislation will keep big companies away from the group health insurance market. If they keep writing policies, the argument goes, when a national health plan comes along they'll loose millions of lives who won't participate. They'll be stuck with lots of expected losses but little new revenue.

Even if national health insurance legislation does pass, the experts think small self-insured accident and health plans will probably fair well. They reason that the legislation will probably be a set of minimum standards and that most workers and employers will want more than minimum protection. Their plans, therefore, will be upgraded to cover that which isn't covered by the federal legislation.

"We see more and more self-insurance coming," said one leading western underwriter. "The trend seems to be working in from the two coasts right now, but we expect that in the next five years almost any company will be able to move toward self-insurance and have—and expect—the necessary expertise from ASOs to determine if this will work for them." ■

Panel approves retirement bill

WASHINGTON — A Senate panel has unanimously approved legislation that would forbid employers from forcing workers to retire before age 70.

The measure (S. 1784) would cover both the public and private sectors. The ban on mandatory retirement before age 70 would take effect six months after the bill is enacted.

The bill now goes to the Senate Human Resources Committee. A vote is scheduled later this month. ■

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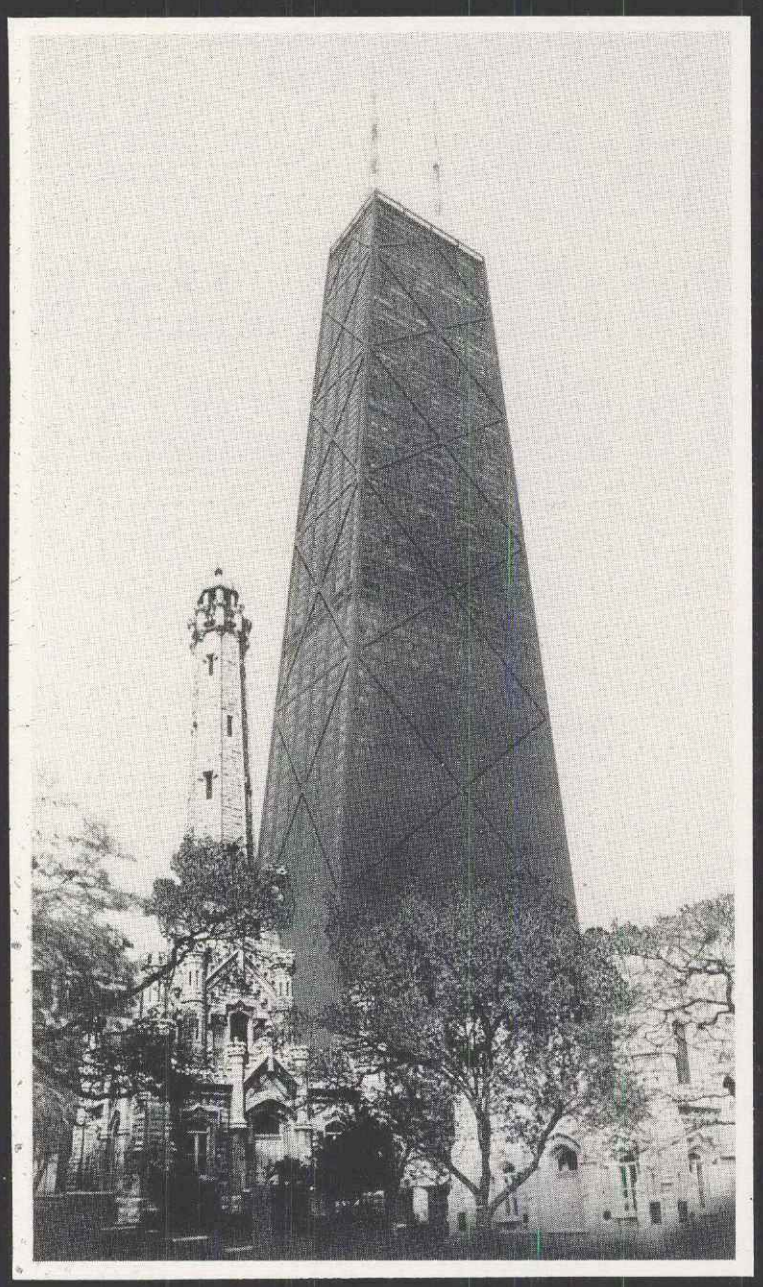

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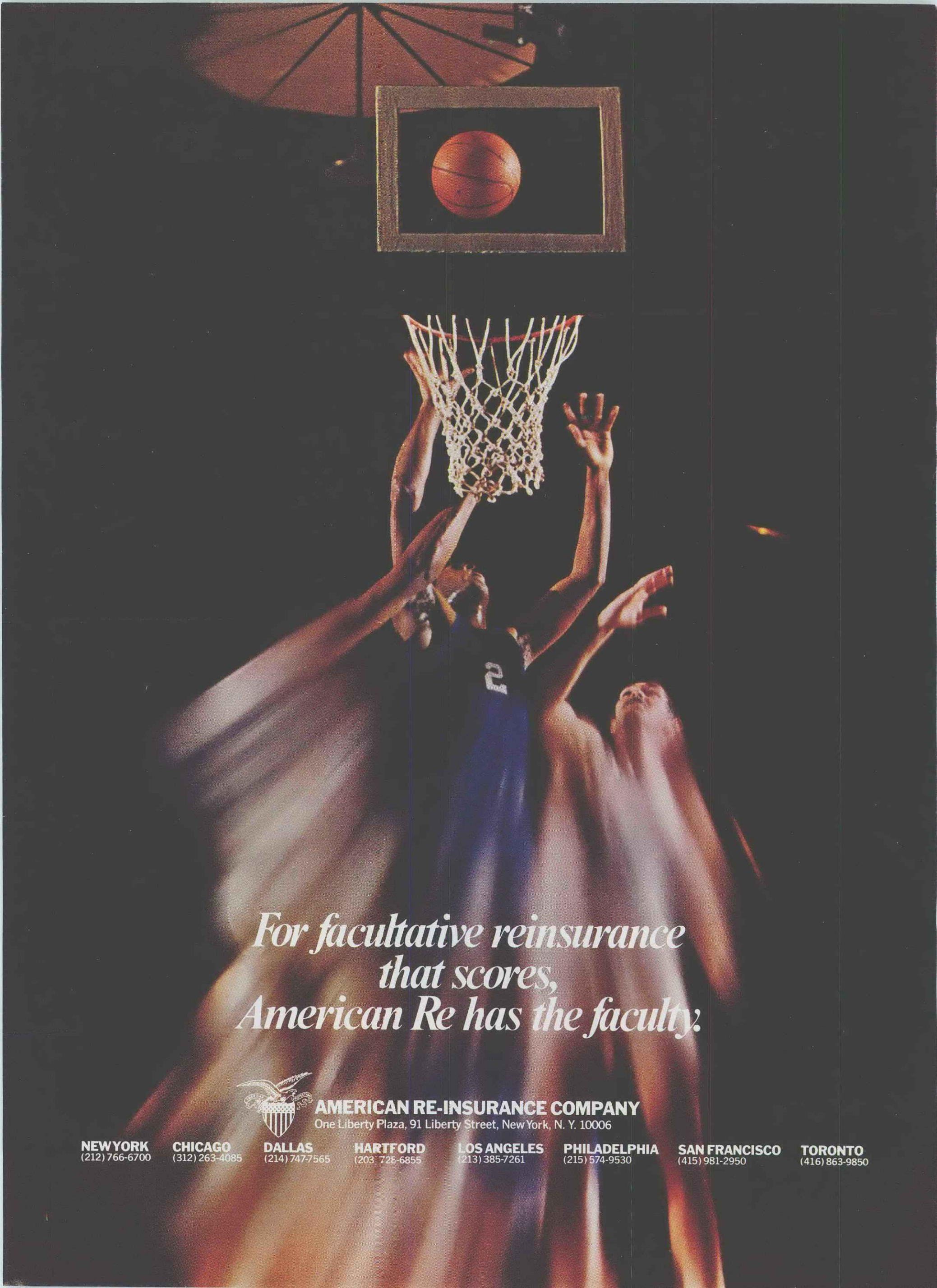

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Downward pressure on rates?

European insurers may add capacity

By JOHN H. MILLER

LONDON—Insurance underwriting capacity in Western European countries and other markets to underwrite both property and casualty business may be starting to increase. If so, it will act as a downward force on rates.

This is the view of one big international broking firm which places excess and surplus lines business from the U.S. in the best available markets for its wide spread of commercial clients.

It will take time, of course, for this trend to work through to the traditional markets which have been covering U.S. risks for so many years.

But with the EEC having declared that there should be greater freedom of movement for insurance business across the Common Market frontiers, there is a new spirit of world opportunities developing among some of the bigger European companies.

Already there is a lot of forward planning going on in this direction. Moves to harmonize freedom of insurance in the Common Market are bound to become law in the end, despite the fact that obstacles towards achieving this freedom are still substantial and may take several years to surmount.

The opportunity to extend their global portfolios is already being taken by leading groups in France, Germany, Italy, Belgium and Holland according to the top executives of the Bland Payne's International broking group who have studied the current trends.

"We still believe Lloyd's will have a big role to play in setting rates, but some of its non-marine underwriters may be surprised by the strength of capacity which will be developing in the future from abroad," Michael Butt, deputy chairman of Bland Payne International in London told *Business Insurance*. "It is our job to look after the interests of our clients. We naturally find the British market responsive to most of our needs, but there is no way we can ignore the influence and emergence of other potential markets for the range of business we place.

"Our estimate is that this currently adds between 20% and 25% to the present non-marine market capacity for much excess and surplus lines business from the U.S. The potential capacity in London itself will, however, also go up significantly as an estimated 4,000 new names join Lloyd's in 1978.

"The effect of these two trends will inevitably have a stabilizing if not downward influence on rates and Lloyd's may well begin to find that it has surplus capacity.

"To reinforce this view, we have observed that many large overseas insurance companies (including those in Europe) are taking the view that their existing portfolios have too high a content of domestic business and wish to increase the spread. Since U.S. lines account for over 50% of the world premiums, they will naturally have to turn to North American business for expansion despite some reservations about the risks involved, (e.g. windstorm, earthquake and liabilities).

"Some of these newcomers have already come into the market with quite substantial capacity. They are certainly following London leaders at the moment as far as many of the rates and conditions are concerned, for there is a great deal of long term underwriting based in the Lloyd's and London markets, but we predict that some of these overseas companies will become more aggressive in the not too distant future.

"At the moment they are still selective. For example, it is difficult to rationalize that the aviation market is prepared to give product liability cover which can rise to $400 million or more, where major non-aviation corporations find it difficult to purchase $150 million to $200 million of cover in the liability market. We are hoping this trend will change.

"The amount of non-U.K. capital in the U.K. market has increased considerably in the last 10 years and we anticipate this trend will continue. This should help to maintain London's role as a leading international 'entrepot' for both direct insurance and re-

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insurance. But at the same time, U.K.-based insurance brokers have adapted their placing habits and are using non-London capacity.

"On some large risks it is not uncommon to find that some layers are placed 30% to 40% with overseas markets following established leaders. We are also looking with interest at recent developments in Bermuda to see how this latent capacity might be more effectively harnessed."

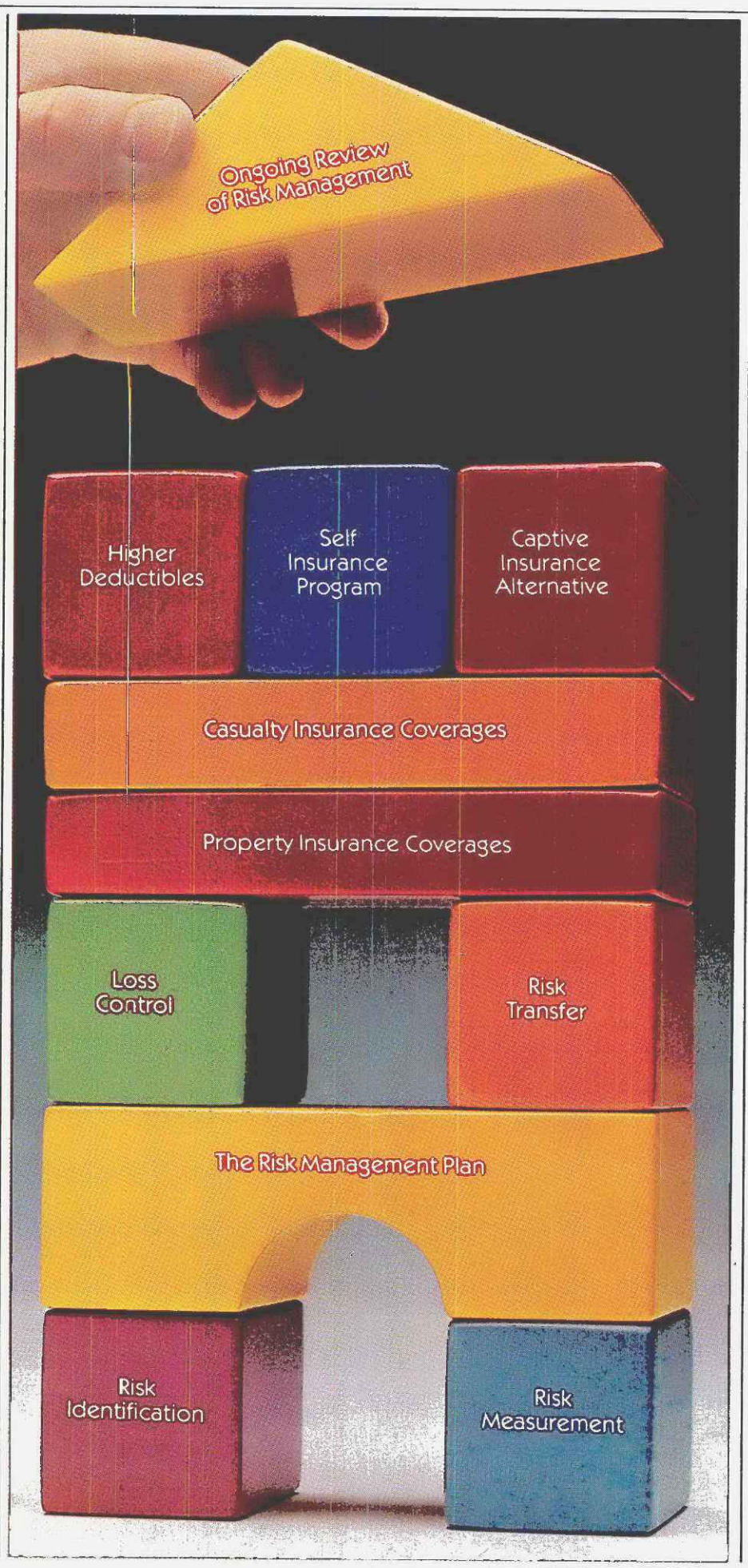
Both Mr. Butt and Roger Earl, managing director of Bland Payne International, also believe that the influx of greater capacity from Western Europe will be complemented by an equally important flow from the emerging Arab insurance markets, as well as from Japan, South America and Southeast Asia.

One qualification would be the effect of a major U.S. catastrophe on these markets at so early a stage of their exposure to U.S. risks.

On the specific subject of third party liabilities, Mr. Butt and Mr. Earl commented that experience with the London market at present still suggests that there is no great enthusiasm for the lower layers of excess third party liability insurance. In fact, most Lloyd's underwriters will not participate on any risk if there is less than $5 million underlying coverage, they said.

There is, however, one London underwriting agency representing a group of international insurance companies which takes a significant interest in these lower layers of liability coverage, namely the Weavers Group, and their presence continues to attract much business to London within this underlying $5 million area.

Right now, Lloyd's as a whole appears to be more receptive to property business than casualty because of its short-tail nature. ■



MEMO FROM
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How your company may be able to obtain 'more insurance,' without necessarily buying more insurance.

What's insurance all about anyway? Just one thing: shielding your assets from unexpected losses. For this protection and peace of mind, you are willing to plan for and pay a specified sum that you consider a fair price for this removal of risk.

Errors are made when you lose sight of the fact that protection is the goal while insurance is merely one means to attain that goal. It follows then that "more insurance" is not necessarily the most advantageous way to achieve a higher level of protection.

The risk management concept

The idea is to start thinking in terms of managing the multitude of risk situations, search-

Market opportunities spur new excess firms

By JOANNE GAMLIN

LOS ANGELES — Trends in the last two years appear to have conspired to make the excess/surplus lines market look like a pot of gold. Underwriting losses prompted the subsequent withdrawal of many standard insurance underwriters. The products liability crisis boosted the surplus lines market. Escalating jury verdicts increased the need for excess liability insurance.

But while these persuasive trends certainly played a role in the formation of many of the new excess/surplus lines wholesale brokering firms which have sprung to life since 1973, they nonetheless competed with a battery of other factors which convinced many individuals in that period to establish new excess/surplus lines firms.

Richard O'Gorman, executive vp of Insurance Management Inc., Des Plaines, Ill., said that his brand new firm, which came into existence this year, was formed mainly for personal reasons.

"There comes a time when you want to see what you can do on your own," he observed. Mr. O'Gorman noted that he and his partner, Gene Ladd, both have extensive experience in the surplus lines business, having both been employed with Excess Underwriters, Chicago.

Insurance Management Inc., he said, is handling a wide assortment of lines from wet marine to truckers liability. He said the firm has a managing general agent's contract with Charter National Insurance Co. and that the game plan is to enter the surplus lines market for everything that cannot be handled in-house.

> 'I also wanted to work for myself, but I couldn't do it until the market gave me the opportunity.'
>
> –Andy Berry

Similarly, a New York City executive who worked for years for a major retail brokerage firm set up a new excess/surplus line firm in May almost solely for personal reasons.

"The surge in the market for excess/surplus line insurance had nothing to do with the creation of my firm," said the executive, asking for anonymity.

The Peter Huycke General Agency, Anchorage, was established in July 1976 according to its owner for a mix of market and personal reasons.

"There was no general agent in the surplus lines market at the time that I set up my firm," related Peter Huycke. He added that last year standard carriers in Alaska were also making deep slashes in the amount of business they wrote, including some business which he regarded as definitely in the standard insurance category.

A second factor motivating him to create his own wholesaling firm, he said, was the fact that he was out of a job in the summer of '76.

"I got fired by my previous employer, Preferred General Agency, after it was sold to Providence Washington Insurance Co. of Rhode Island," he explained, noting that he was determined at that juncture to remain in Alaska and in the excess/surplus lines brokerage end of the insurance industry.

Mr. Huycke said that his agency should do between $800,000 and $1 million premium volume this year. The firm has no single specialization; it deals in the areas of auto, general liability, crime, inland marine and mobile home insurance markets.

Skanco International Ltd., Scottsdale, Ariz., an excess/surplus lines wholesaler which is just now "getting up and running" after being chartered last December, was formed almost entirely for market reasons, according to Andy Berry, a partner.

EXCESS/SURPLUS and special risks

He said that he and his partner, T. C. (Skip) Anderson, formerly worked for Great Southwest Fire Insurance Co., an excess/surplus lines carrier. They were thus in a position to maintain a bird's eye on market conditions. What they observed was that the standard insurance market was being socked with mounting underwriting losses, figures which were being made gloomier by declining stock prices.

"I also wanted to work for myself," said Mr. Berry. "But I couldn't do it until the market gave me the opportunity."

Now that the market seems overflowing with opportunity, he calculates that Skanco, which intends to handle most commercial lines, will do between $2 million and $2.5 million in premium business in the next 12 months. Early figures are encouraging, he acknowledged. For the first month of real operation: $37,000 in premium volume; for the second month, $160,000.

Chicago-based Roanoke International Insurance Agency, a retail brokerage firm specializing in ocean cargo coverage, began an excess/surplus lines business for a single class of errors and omissions (E&O) coverage three years ago. The coverage was United States custom brokers international freight forwarding professional liability insurance, and it hadn't been sold previously, according to Lawrence Graf, director of insurance agencies for the firm.

Pointing out that the wholesale operation is a direct writer and does no business with retail brokerage firms, Mr. Graf said that the small excess/surplus lines operation was formed to fill that vacuum. Contrary to the experience of many retail brokerage firms that have been hobbled in their efforts by a dirth of underwriting markets, Roanoke has met no such obstacles.

"Excess/surplus lines underwriters will not make themselves

Continued on Page 28

ing always for the most efficient method of attaining the necessary protection. The concept of risk management in today's complex business and legal environment requires more than conventional insurance responses.

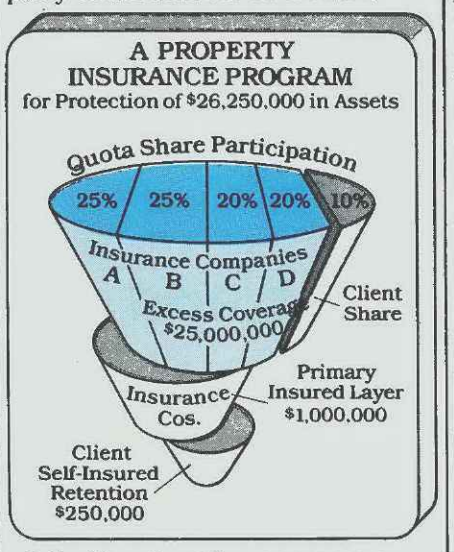
In simplest terms, risk management entails identifying risks, assigning value to them, anticipating losses and making objective decisions about what steps to take before losses occur, so that they have the least impact on the operation of your business.

Linked to this, of course, is the need to implement a meaningful loss control program which will help to prevent or reduce the incidence and severity of losses.

Two principal options are open

First of all, risks may be transferred in the conventional insurance manner. The important thing to remember here is that this decision is made only after a thorough review and examination when it is concluded that this is the correct response in the particular case under consideration. It should not be a reflex action.

Secondly, risks may be assumed by your company, either in whole or in part. A higher deductible is an obvious way for a company to assume a portion of the risk and thereby reduce the cost of purchased insurance—yet still retain adequate insurance protection against catastrophic loss. An established self-insurance program is another way for a company to assume its own risks,



while diverting the money earmarked for premiums into a separate fund to cover projected losses.

The optimum plan may very well contain elements of both(see chart) but only with expert analysis can one approach the optimum with confidence.

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New firms . . .

Continued from page 27

available to retail brokers because they do not have the personnel or the time to work with the army of retail brokers in this country," explained a spokesman for M. B. Buettner & Co., Inc., a seasoned excess/surplus line wholesale brokerage firm in Los Angeles.

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No problems at all were encountered by Roanoke in its search for markets for its single line of professional liability insurance, Mr. Graf stressed.

Market conditions also were the spur that persuaded Jerry Boyer and Doug DeLano, partners in Central Wilshire Insurance Brokers Inc., Los Angeles, to set up shop in the fall of 1975. The firm, doing approximately $3.2 million in premium volume this year, specializes in excess products liability coverage.

"We felt we had the expertise," said Mr. Boyer, noting his view that the standard insurance market will never return to underwriting product liability coverage with the depth and aggressiveness it flaunted prior to the mid 1970s.

Shrewd appraisals of the gathering storm in the standard insurance market also convinced Joseph F. Weckerle and David R. Hoskins that the time was ripe for a try at the excess/surplus line wholesale brokerage business.

It was autumn, 1975 when the two men formed H&W Insurance Services, headquartered in Encino, Calif. Today Mr. Weckerle and Mr. Hoskins, president and executive vp respectively, have four other offices across the country are anticipating a staggering premium volume for the year ending Nov. 30, of about $30 million.

"Most of the people who get into the surplus lines business tend to be brokers by profession. By profession, we are underwriters," said Mr. Hoskins, by way of explaining the dazzling growth of H&W Insurance.

"Although we have no underwriting authority, we make sure that everyone we hire has an underwriting background. We then pre-underwrite the risks we receive from the 250 retail brokers with whom we work, brokering this business only to those underwriters who are specifically suited for it," he went on.

H&W's predominant interest is casualty, Mr. Weckerle said, "but within that area, we attempt to react to problems."

One of the strong underpinnings of H&W's growth, continued Mr. Hoskins, has been its attention to the insurance needs of public entities. Starting in California, H&W has helped cities in Florida and Georgia obtain public liability coverage. Illinois and Alaska now are under scrutiny as the next two states where the need for these kinds of services from H&W will appear.

Further evidence of this interest is the firm's public entity liability pool, begun in January, 1976. It currently covers 60 California cities. Primary coverage excess of qualified self-insured retentions is offered by the pool, underwritten by Admiral Insurance and First State Insurance Co.

Public entities, nonetheless, will account for less than 30% of the $30 million in premiums anticipated for 1977.

Lessons learned in the public entity area will now be applied to medium-sized commercial accounts.

"How many little businesses do you think today are swapping dollars with big insurance companies on a retro plan or some other kind of rating formula where they are paying $2 for every $1 worth of loss?" said Mr. Hoskins, who believes that in California, at least, "the biggest weakness in the admitted market is that it does not have the type of quality people that the surplus line or non-admitted markets possess."

There apparently are two ways the rule that bars retail brokers from getting a strong foothold in the wholesale excess/surplus field can be breached. One is by utterly divorcing the operation from the retail firm. The other is by obtaining a wholesale contract from London.

Surplus Insurance Brokers, South Bend, Ind., is an example of the first approach. As Ted Hehman, vp, for the firm explains: "There was a small wholesale operation in South Bend which before the capacity crunch, was losing money.

"The people who had it had little experience with insurance and the firm was losing money. So they made a gift of it to us."

Quickly discovering that surplus line carriers will not deal with retailers who become wholesalers, Mr. Hehman said that the decision was made to divorce the wholesale operation and to give it a new location and corporate name.

The result: In its 2½ years of existence, Surplus Insurance Brokers, with a staff of four people, is doing $1.3 million in premium volume.

Mr. Hehman went on to observe that part of his firm's success derives from the fact that the firm sprang up in northern Indiana just at the time when the need for such services was beginning to grow.

Meanwhile, he noted that the retail firm, Wilkinson Hunter, is also thriving.

Retail brokers with a London contract can, however, act as wholesale brokers. The reason: London for years has made no distinction between a surplus lines broker and a retailer.

"I don't know why, but they just don't," a veteran observer said. ■

New consultant

Raymond "Jack" Holland is joining Darien, Connecticut-based Risk Planning Group Inc., international risk and insurance management consulting firm. Mr. Holland will be a senior consultant. Mr. Holland was formerly corporate manager for occupational safety and health at Pitney-Bowes Inc. He is a Certified Safety Professional (CSP) and brings to RPG additional expertise in risk control and safety engineering. The firm is planning to broaden its services in this area, offering risk control evaluation and employe training programs. He currently teaches at Fairfield University in Fairfield, Conn. Mr. Holland is a graduate of Rensselaer Polytechnic Institute.

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Big brokers still rely on wholesalers

By JERRY GEISEL

WASHINGTON—The big national brokerage houses continue to rely on wholesalers who play an indispensable role in obtaining coverage from suppliers in the mysterious, arcane world of excess/surplus risks.

Because of their high-volume operations and highly-skilled staffs, wholesalers have the clout and the technical knowledge to snare coverage for the big retailers' clients in the elusive, chronically tight surplus market.

The major retailers and wholesalers thrive side by side in a mutually beneficial relationship. The retailers, with their far-flung agencies and affiliates can deliver the market right to the wholesaler's doorstep, saving wholesalers immense operational expenses.

Freed from dealing with thousands of clients, the wholesaler's super-lean staff can devote its full resources to scour the market for coverage and keep abreast of who is writing what.

At the same time, wholesalers, through exclusive working arrangements with surplus lines suppliers, provide the conduit for coverage since suppliers often only open their doors to wholesalers, locking the top retail brokers and every one else out.

This isn't to say that brokers always deal through wholesalers in the surplus lines markets. Indeed, a wide variation exists among the top 20 brokers in how they place their surplus risks.

At giant brokers, such as Alexander & Alexander and Frank B. Hall, a majority of the risks are placed directly with the excess/surplus insurance supplier. At smaller firms, though, such as Harlan Inc., wholesalers are used between 70% and 80% of the time on a premium volume basis.

The structural differences, in part, account for why some brok-

EXCESS/SURPLUS
and special risks

ers are able to go direct to the market more often than others. Insurance Management Corp., for example, operates a decentralized agency system, as opposed to the coordinated marketing and account handling system found at some of the larger brokers.

As a result, none of IMC's offices have enough excess and surplus submissions to permit them to work directly with the excess underwriters. Thus, "'Over 95% of our surplus lines business goes through wholesalers," said vp Marvin Blum.

While all brokers value the role of the wholesaler, some prefer to work whenever possible directly with the insurer-supplier. "To the extent we can deal directly with the underwriter, we feel it is to our advantage and to our client's advantage," said Louis Metzger, vp at Arthur J. Gallagher & Co. in Rolling Meadows, Ill. Working directly with the supplier means "there is no delay in answering their questions."

Brokers emphasize that they prepare a risk for analysis in the same way, regardless of whether it goes through a wholesale broker or right to the market.

"The questions an intermediary (wholesaler) wants answered are the same questions the final insurance carrier wants answered," said Peter Ripp, a vp at Frank B. Hall.

Basic questions that would be answered in a broker's risk analysis would include:

- What is the possible liability exposure?
- What is the loss ratio history?
- What safety programs does the client have and are they being monitored properly?
- Are there any outstanding claims against the client?

Few brokers see any radical changes in the existing tri-level system of placing a client's risks. The most significant change on the horizon is for the big brokerage houses to set up their own wholesale operations to handle their clients' risks as well as the risks of their competitors' clients.

Most brokers at the big houses give high marks to the wholesalers they work with. "They are professionals' professionals," said Mr. Ripp of Frank B. Hall.

Major national brokers report excess lines volume jumped close to 30% in the last year. But most of this increase was due to higher rates as well as from clients who were squeezed out of the primary market because of the unavailability of coverage.

"What used to be primary now is excess," said one broker in the deep South. ■

Consultant sees medical market ease

CHICAGO — Medical institutions shopping for excess medical malpractice insurance over a self-insured program are finding friendlier merchants with better prices, according to a consultant here.

Warren G. Brockmeier, director of risk management services for The Wyatt Co., has noticed improvement in the market in the last three or four months, he said.

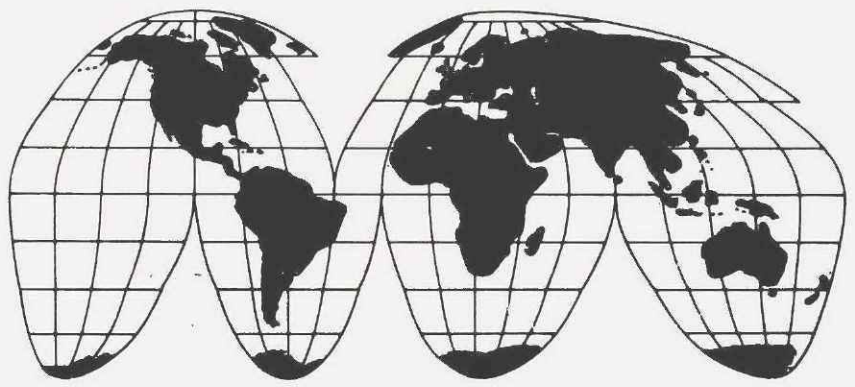
"There appear to be some additional companies coming in and more reasonable pricing. London is getting back in—a year ago they wouldn't write over a self-insured program.

"We're seeing drops as much as 30% compared to last year's premiums," he said, on $2 million of coverage over a $1 million/$3 million program.

And in one instance, the excess insurer quoted a lower premium for writing over a self-insured program than over a primary policy, Mr. Brockmeier noted. He would not, however, say if the excess underwriter was impressed with the self-insured program or distressed with the particular primary carrier, which he declined to name.

Mr. Brockmeier's vantage point is from the programs of 150 clients representing 400 institutions.

In general, Mr. Brockmeier said, the excess market is becoming more comfortable with writing over self-insured programs at hospitals. He attributes the changing attitudes to the development of good claims adjusting organizations and specialists in loss prevention for hospitals and new regulations governing self-insurance for medical institutions that lend credibility to a program. ■



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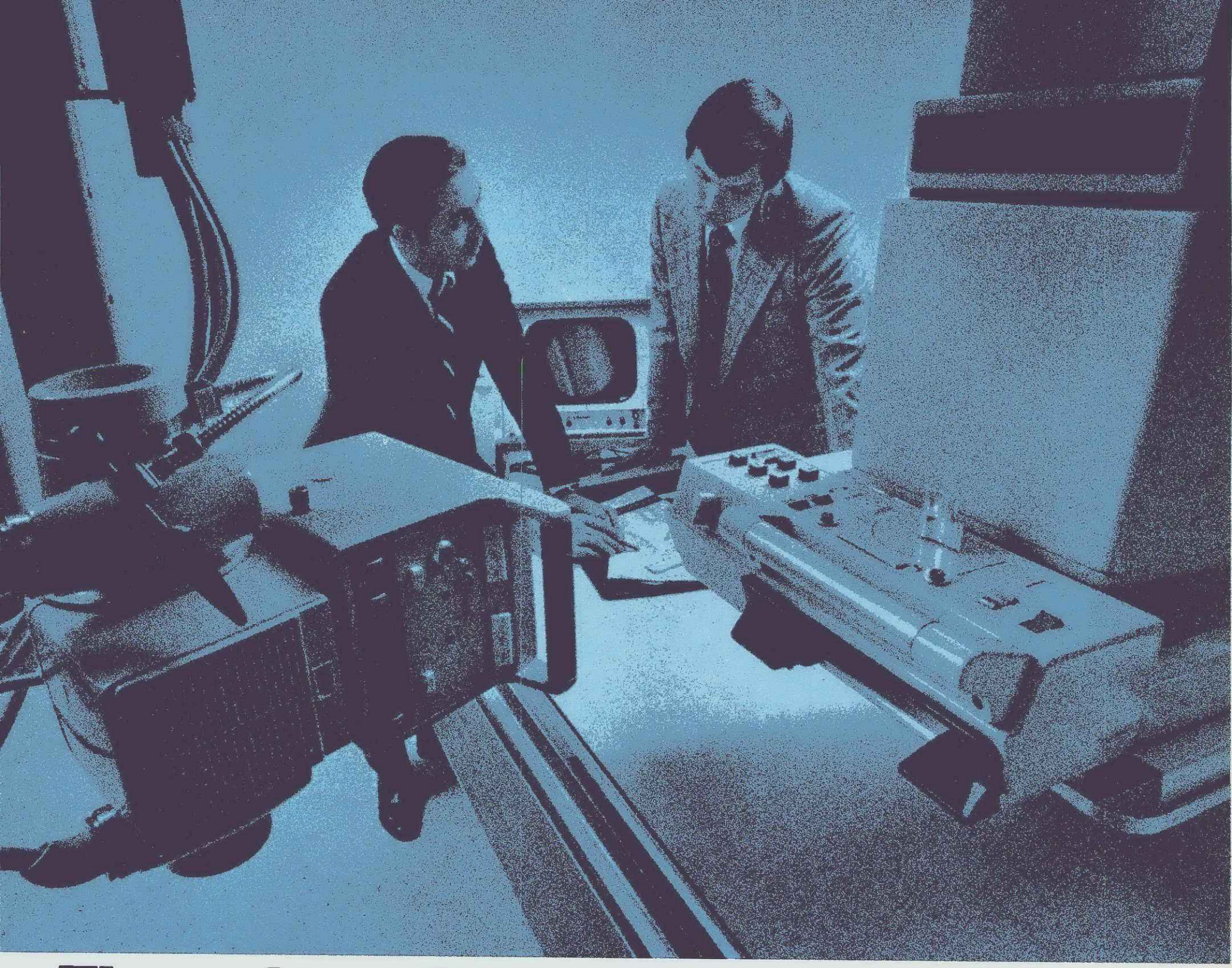

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'Shopping' can drive up the price

By JERRY GEISEL

WASHINGTON—A risk manager who asks several brokers to get bids on excess/surplus coverage may find himself locked out of the market by some very irate suppliers.

"Once a supplier sees a company's proposal coming in from a couple of different brokers, they say 'Forget about it,'" said Harold O'Hanlon, a regional vp with Fred S. James & Co. in Philadelphia.

"Shopping," as the big brokers refer to the practice of asking several brokers to simultaneously look for coverage, causes ill will and makes the suppliers think the buyer is playing games.

The reason for the suppliers' and brokers' strong feelings is clear: In today's incredibly tight excess/surplus market there is

EXCESS/SURPLUS
and special risks

often only one supplier of insurance available. To see the same proposal for coverage five times wastes a supplier's time and leads him to believe that the insured is more interested in price than stability, said one broker in the East.

"When brokers keep running into each other in the same market on the same account, the underwriters feel the risk is 'distressed' and the price is forced up," said Louis Metzger, a vp at Arthur J. Gallagher & Co.

Rather than saturating the market with proposals that will do more harm than good, a risk manager is better off to interview brokers first so he or she can listen to their brokering strategies and evaluate their qualifications, Mr. Metzger said.

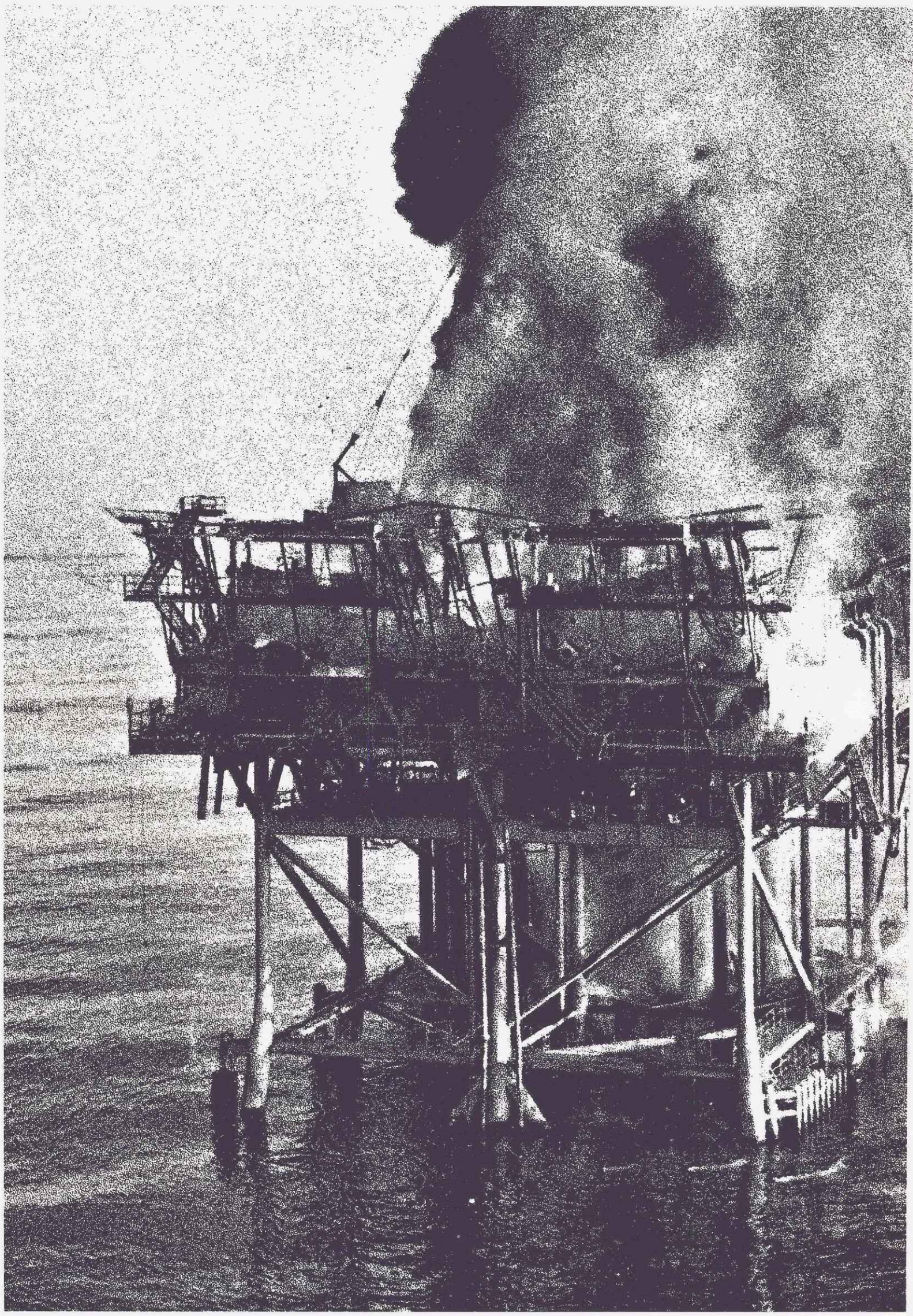
Brokers generally dismiss the idea that "special arrangements" exist between retailers and suppliers that would allow a broker to gain exclusive leverage in a market for a client.

If a risk or insurance manager insists on using more than one broker, it is of critical importance to let each broker know that someone else also is trying to find coverage, said Larmon R. Salmon, executive vp at Harlan Inc. in Houston.

The coverage should be divided up among the brokers or they'll soon will be running into each other, which will "muddy up the waters," Mr. Salmon said.

Special access, of course, does exist in the relationship between some suppliers and high-volume, highly specialized brokers.

The rationale behind an exclusive arrangement is simple. By assuring the wholesaler a competitive advantage, he has a powerful incentive to concentrate all resources analyzing the risk, knowing the chances of being beat out on the underwriting by another broker are non-existant. ■



A&A slates joint unit

NEW YORK — Alexander & Alexander Services Inc. and Alexander Howden Group Ltd. of London have agreed to form a jointly owned company, Alexander Insurance Services (Bermuda) Ltd.

Alexander Insurance Services (Bermuda) will act as a holding company and will operate through two wholly owned subsidiaries in Bermuda. Alexander Underwriting Agencies Ltd. will act as underwriting agents for Hemisphere Insurance Co. Ltd., a wholly owned subsidiary of A&A, and Trent Insurance Co. Ltd., a wholly owned subsidiary of Alexander Howden Group (Bermuda) Ltd.

Alexander Insurance Brokers Ltd. will act as direct and reinsurance brokers for all classes of business. ■

Paint must cut lead use

WASHINGTON — Paint manufacturers are going to have to get the lead out.

A federal regulation announced this month by the Consumer Product Safety Commission (CPSC) will slash the percentage of lead allowed in consumer paints from the current level of 0.5% to 0.06%.

The new tougher standard not only applies to regular house paints, but also covers paint on children's toys. Products exempted from the standard include agricultural and industrial equipment refinishing coatings and artists' paints.

The CPSC standard will take effect March 1, 1978. ■

Greyhound unit to enter excess reinsurance

NEW YORK—Pine Top Insurance Co., a subsidiary of Greyhound Corp., said it will begin underwriting excess and surplus reinsurance this year.

Robert Egner, president of Pine Top, would "expand and diversify" into the national and international reinsurance markets with a capitalization "approaching $10 million by yearend."

James A. Oliver, vp of Pine Top, said "We intend to develop a truly professional worldwide reinsurance operation for excess-of-loss buyers." The Phoenix-based concern will utilize two subsidiary firms in the venture, Mr. Oliver continued.

The London-based Pine Top Insurance Co., Ltd., managed by the C. E. Heath (Agencies) Ltd., and Pine Top (Bermuda) Ltd., a Bermuda subsidiary, will handle most of the international reinsurance. The Bermuda firm has $500,000 in capitalization and a surplus of about $500,000, Mr. Oliver said.

"We want to emphasize, "Mr. Egner said, "that these two companies are Pine Top subsidiaries and not captive insurance firms." He said, "Our London and Bermuda offices are wholly owned subsidiaries specializing in international markets. They have no Greyhound business, he insisted, "and they are not captives."

Mr. Egner said the expansion into the excess and buffer layer market "reflects a better use of our capital. We feel what we have the capacity and expertise," he continued, "to participate in reinsuring airlines, ships, North Sea wells and other high risk jobs."

Baccala & Shoop, an underwriting manager based in Los Angeles, will assist with most of the U.S. business, Mr. Egner said. Their experience in underwriting excess and surplus lines business make them most desirable business partners, Mr. Egner said. ■

EXCESS/SURPLUS and special risks

New president

Herbert S. Frank has been elected president of the N.Y. Property Loss Assn., an organization of supervising insurance loss personnel and adjusters. He is with the Howden Swann Group.

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The Asset Management Professionals

If the rates are right, London will insure your excess coverage

By JOHN H. MILLER

LONDON—Life is going to stay pretty hard for anyone seeking to place U.S. casualty excess and surplus lines business in London.

But if you go right to the top of the tree, then there'll be no difficulty in talking realistically about rates with Lloyd's experts who handle this class of cover.

It's likely to be a "no nonsense" approach, however. Underwriters in some classes of business are moving away from the old assumption that Lloyd's will readily insure anything that lives or moves.

Certainly this willingness to offer coverage in many fields is still the mainstay of the marketplace where the historic Lutine Bell hangs ready to warn of any major insurance event. The traditional Lloyd's market operator, often with many years of experience behind him, obviously wants to feel this will remain the case for a very long time.

But in some minds there are new, and sometimes younger, brokers and underwriters who are matching their thought with likely trends in the 1980s that may well clash with past views. They are having to say to their clients in some liability fields "London can't any longer be all things to all people."

So what's the future for excess and surplus line business? Heartening, if the likely facts of the situation are appreciated. But not so good if people try to get this cover cheaply, say the brokers.

Primary layers are still destined to stay largely in U.S. markets, where servicing can be done much more cheaply and effectively by agents on the spot, rather than having to provide the know-how from 4,000 miles away.

Buffer layers in excess of $250,000 or $500,000 will be available in London, but potential buyers will find it is a tight market where London is not so strong since there are only about half a dozen players in the game.

High layers will be much more readily available if the attachment point is greater than $1 million.

"That's the point at which London becomes more effective," said Robin A.G. Jackson of the Merret Dixey Syndicate, after studying the situation. Many London underwriters wish to be away from the frequent loss areas.

"London's future, I believe, is in risk taking, not dollar swapping deals," he said.

Mr. Jackson, who has close contact with the U.S. markets and is visiting the U.S. again soon, went on: "Because of the way in which we at Lloyd's do business, we cannot be expected to compete with

EXCESS/SURPLUS
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the big primary insurance companies operating in the U.S., handling risks where there is a large frequency of claims on a direct basis.

"If my guidelines are correct, or even partly correct, I see a strong need for London in the next decade for U.S. business provided we don't lose sight of what London can or cannot do," he said.

"We all talk a lot about premium levels. But London has got to think more in terms of service, which certainly includes claims handling, with a more positive vein than has been the case in the past," Mr. Jackson added.

How will rates shape up for excess covers in the next 18 months? There have undeniably been substantial hikes in the past eighteen months, as Mr. Jackson agrees. He just hopes they are enough.

"Layers due for renewal in the next year or 18 months which have not been renewed for three years will have to be renewed at very substantial rate increases," he said. "Those which have already been renewed with substantial rate increases may only suffer rises commensurate with increased exposures and inflation when they come up for renewal again.

"During the rate cutting period of 1970-75, for which the U.S. underwriting community was most to blame, London lost a lot of its existing business. When the inadequate rate structure was proven, coincident with a drop in stock market prices, many U.S.-based underwriters refused to go on writing their domestic business, reduced their lines or put up rates across the board.

"I think London's done a pretty good job in trying to deal with the business that's come back to us as a result. But the casualty market should certainly remain tight for the next 18 months at least.

"The London market can be reasonably satisfied with how it has performed for the U.S. domestic insurance buyer and broker in the last two years. Generally we've been available at least to listen to their problems when no one else would answer their telephone calls.

"The fact that there's now starting to be some criticism of London's pricing and attitude in print, as well as being muttered in bars, proves that our position in the market today is stronger than for at least 15 years.

"While I do not accept that we have done so, it's hardly surprising if we were to over-react, when the London market was dropped so unceremoniously a few years ago. The U.S. insurance buyer in my view has little cause for complaint. He had his insurance ridiculously cheap for too long. Now reality has to be faced."

Dealing with capacity problems, Mr. Jackson said: "While the U.S. market has not made much progress lately in increasing its capacity, the London market has been making substantial strides forward, both at Lloyd's and in the company market. Although most syndicates starting at Lloyd's in 1978 are going to be very conservative about U.S. casualty business. Don't forget that at least half of this new capacity will be going into marine and aviation facilities which have already more than enough capacity, rather than in the property/casualty area.

"Rates for excess-of-loss individual risk property lines are way too cheap in a growing number of cases. I hope the increasing number of substantial fire losses recently will have some effect in pointing this out.

"It's inevitable that there will be an aggressive push for property business in the desire of most underwriting associations to balance their books. The great enthusiasm for short-tail lines is particularly

Continued on page 35

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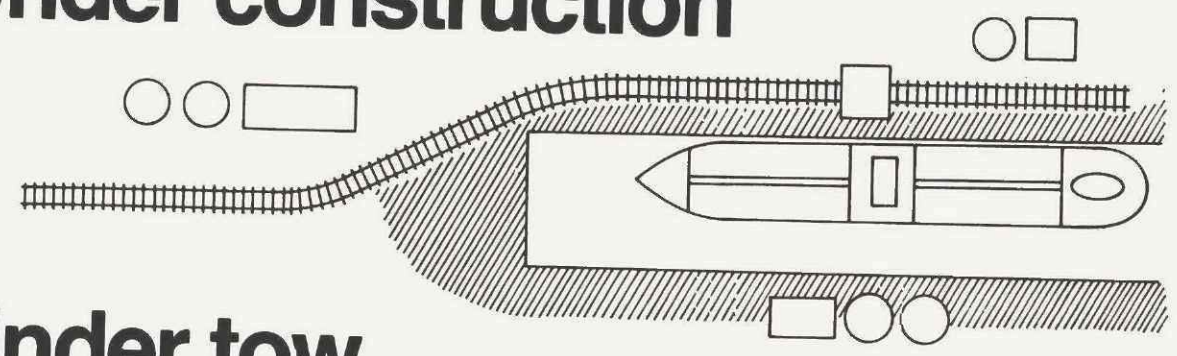

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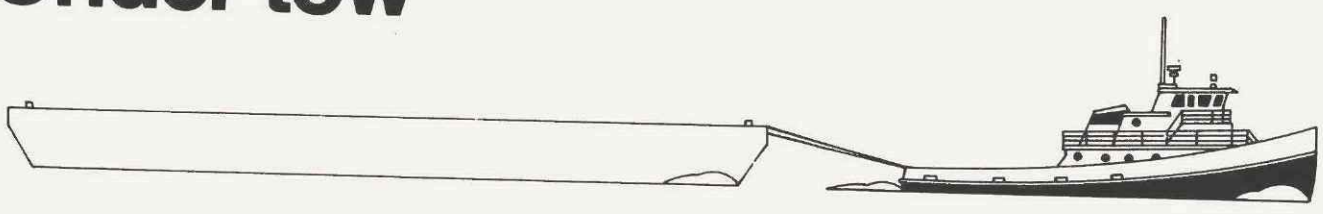

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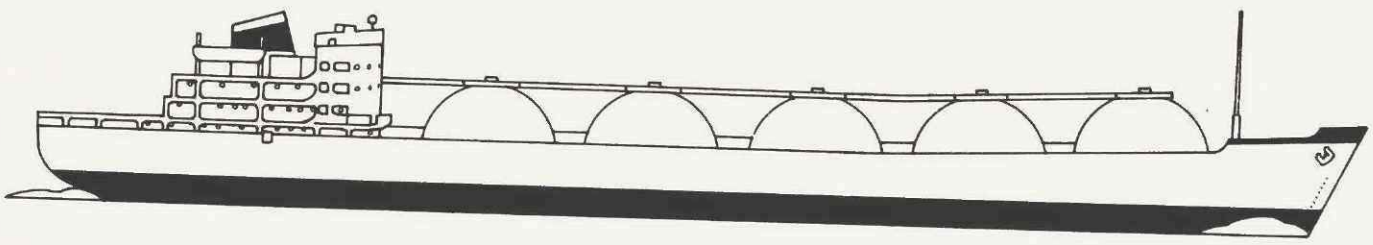

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ARM sets major move into excess

NEW YORK — American Risk Management Inc., one of the nation's oldest and largest captive insurance management firms, announced the formation of a new offshore facility to write buffer and excess liability insurance.

The new entity, United Insurance Co., is located in Shannon, Ireland, and has a capitalization of $100 million. The move is part of an expansion effort by ARM and represents "the most significant entry of captive insurance into the excess markets," according to ARM.

Arthur H. Deters, executive vp and director of ARM, said the new concern "would handle the so-called difficult areas of product liability, workers' compensation, buffer layers of casualty and all-risk property covers." He described these lines as highly lucrative currently.

The facility is located in Shannon to take advantage of excellent communication and transportation systems there. The proximity to European markets and Ireland's pro-business environment were also instrumental in its selection. United expects to write substantial European business.

The new ARM entity represents a coming trend in the captive insurance business. ARM manages scores of U.S. captive insurance companies in Bermuda and elsewhere. Participants' contributions into the $100 million capacity accounts for almost all the funding, and each member will share the new excess and buffer reinsurance business. Mr. Deters would not disclose exactly how many captives are participating in United.

United will write both facultative and treaty business. Facultative reinsurance has a piecework configuration; each individual risk is examined by participants before they agree to take the risk. Treaty reinsurance is contractual risk-sharing; agreeing participants take from 1% to 5% of new business without examining the new accounts. Treaty arrangements usually indicate great trust between the underwriter of an account and the reinsurer, while facultative arrangements often apply to very high risk underwriting. ■

London . . .

Continued from page 34

noticeable in the treaty catastrophe covers now being negotiated, but I think that London is showing a stronger backbone in the fight against reduction in rates than the U.S. market.

"It is such a pity that, although I can fully appreciate why people want property premium, they have to be so over-keen to do it cheaply. A lot of this enthusiasm is coming from new entrants into the business with apparently more money than sense, or from what I would call second or third tier reinsurers."

Mr. Jackson stressed that Lloyd's has "nothing to be ashamed of" in the way it is handling the immense flow of U.S. business, but it is likely to remain a tight market for casualty.

"Some European companies have shown a growing interest in the U.S. market, both in starting operations in North America or being more willing to accept reinsurance sent to them in Western Europe either direct or via London," Mr. Jackson said.

He is particularly concerned about product liability which has a potential for massive business interruption losses, such as the failure of gauges, pumps and pressure vessels which form an integral part of highly sophisticated plants where a complete shutdown of a plant can be caused by just one small part of the overall chain. Product liability underwriters in his opinion should be giving more thought to contingent property damage losses than they presently are. For in many instances the excess carrier is now starting at a much higher attachment point, which generally should relieve him of most personal injury claims. ■

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Secondly, you are better able to tailor your limits of liability annually (yesterday's limits may not be sufficient for claims made today, and today's limits may not be sufficient tomorrow). Result: opportunity to purchase higher limits *when* you need them.

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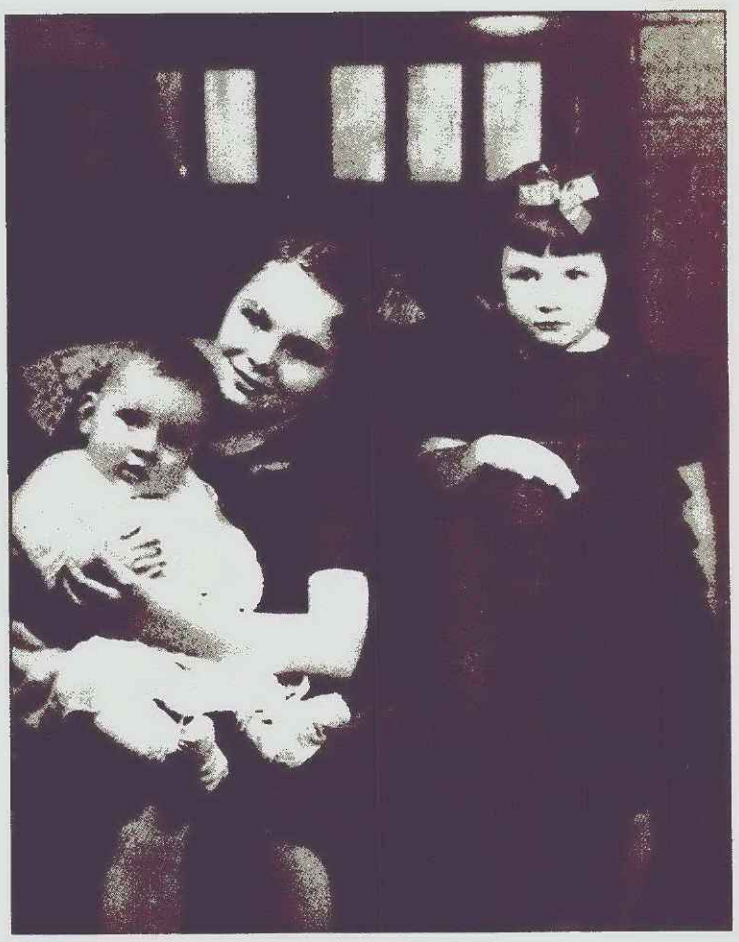

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S&L risk manager

Loan portfolios are this man's interest

By JOANNE GAMLIN

SAN DIEGO—Most of Wayne G. Plazak's time is spent managing the exposures found in loan portfolios.

The reason: He is the risk and insurance manager for San Diego Federal Savings & Loan Assn., one of the few savings and loans in the nation to boast a full-time risk manager.

San Diego Federal has $1.4 billion in assets and 48 offices in California.

Mr. Plazak, 46, is able to devote long hours to checking on the insurance of the loans because San Diego Federal's other coverages are not very troublesome. Most are insured by Fidelity & Deposit Insurance Co. of Baltimore.

San Diego Federal pays Fidelity & Deposit about $127,500 in annual premiums divided between property/liability, $60,000; auto liability, $37,500, and blanket bond, $30,000.

Two other major coverages are insured elsewhere. Workers' compensation is insured on a first-dollar retention basis by Fireman's Fund American Co. for about $40,000 a year. Swett & Crawford of Los Angeles provides directors and officers liability at an annual premium of $20,000.

A wholly owned subsidiary of the savings and loan, San Diego Federated Insurance Agency, acts as broker.

Illustrating how troublefree most of the coverages have been, Mr. Plazak said San Diego Federal has never had any claims from a robbery or burglary. The savings and loan is currently installing 24-hour surveillance in all 48 branches.

And although death benefits are the largest exposure in a savings and loan's workers' compensation coverage, he noted that "we have not had a compensation claim paid on a death claim."

Mr. Plazak's main job, therefore, is guarding his employer's major asset, its loan portfolio, scrutinizing all loan accounts over $100,000 in principal.

"One of the most challenging jobs I've had recently occurred when a local hotel was refinanced with a multi-million dollar loan, much of it with San Diego Federal," he said.

Setting insurance requirements was complicated by the requirement that contingent liability from the operation of building laws be purchased. In addition, the California Coastal Commission might have delayed the rebuilding of the hotel for a long time, making it difficult to estimate how much business interruption insurance should be carried.

"Then, of course, normal business interruption insurance won't pay if the commission refuses to issue a new permit," he noted, "leaving not only the hotel, but also us, the lender, unprotected."

When actually faced with protecting San Diego Federal's portion of the multi-million dollar loan, Mr. Plazak said he spent many hours with his broker to set up a formal insurance program.

"Say, one of our individual clients had a $1 million loan which is a 90% to value loan, meaning that he had only a 10% equity," he explained to illustrate the problems he faces. "Say, too, that he is uninsured and that we have a $1 million loss. In such a case, the man would have lost $100,000 and we, the lender, would have lost $900,000."

Precisely because loan protection is essential to the health of a savings and loan, Mr. Plazak must constantly monitor the loans made by his employer.

One danger of taking your eyes off the loans is that "many of the larger borrowers, because of the large exposures, will opt for large deductibles," he said.

"If a hotel chain, for example, comes to you confident in their own mind that they can afford a $100,000 deductible on a $200,000 loan, you still have to ask yourself if you, the lender, can shoulder such a risk."

Once these situations spring up, he said that other ways to protect the deductible exposure must be found such as letters of credit or a pledged savings account.

There is a tendency now for savings and loans to purchase blanket mortgage interest policies which do not demand that evidence of insurance be presented by borrowers, he observed. Such policies insure only the mortgage interest in these loans.

"So if a loss occurs and the borrower lacks insurance, the lender is compensated out of his master policy but the borrower is left in the lurch," he said.

For precisely this reason, San Diego Federal has stood firm against converting to such coverage, according to Mr. Plazak.

One of his most severe headaches lies with individual condominiums.

"The problem arises when an insurance agent has, say, 200 clients in a single project. If he also has 30 different lenders, how does he provide each lender with adequate evidence of insurance?"

In most instances, he said the agent has only a written master condominium package policy.

What makes such situations sticky, he indicated, is the fact that some agents refuse to supply lenders with evidence of insurance. However, when the Federal Home Loan Bank Board inspects a loan portfolio, he said, they want to see evidence of adequate insurance as well as proof that the master policy is sufficient to cover individual loans.

He acknowledged that the major job of a federal savings and loan is to provide home loans. Projects such as a large hotel, a shopping center or condominiums are restricted by regulations to a certain percentage of an association's assets.

Yet even with prosaic home loans, he said a lender encounters the same sort of difficulties as with more glamorous projects. For while almost every homeowner will purchase insurance when he takes out his loan, some will always permit the coverage to lapse during times of reversal.

Mr. Plazak has been at San Diego Federal for four years. He was formerly San Diego branch manager for Swett & Crawford of Los Angeles; risk manager for Royal Inns of San Diego; commercial accounts producer for John Burnham & Co. in San Diego, a brokerage firm, and special agent for the Insurance Co. of North America in San Diego. ■

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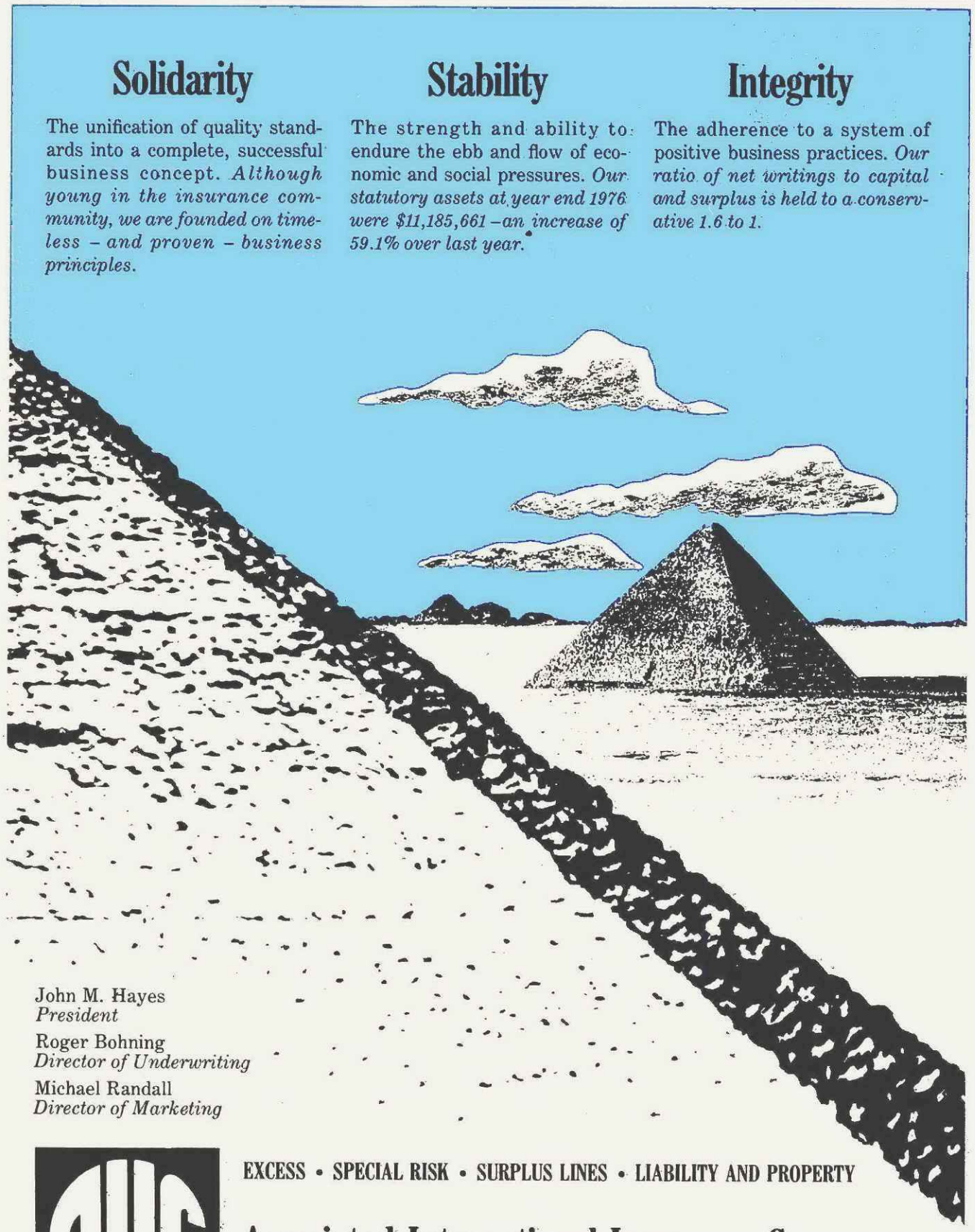

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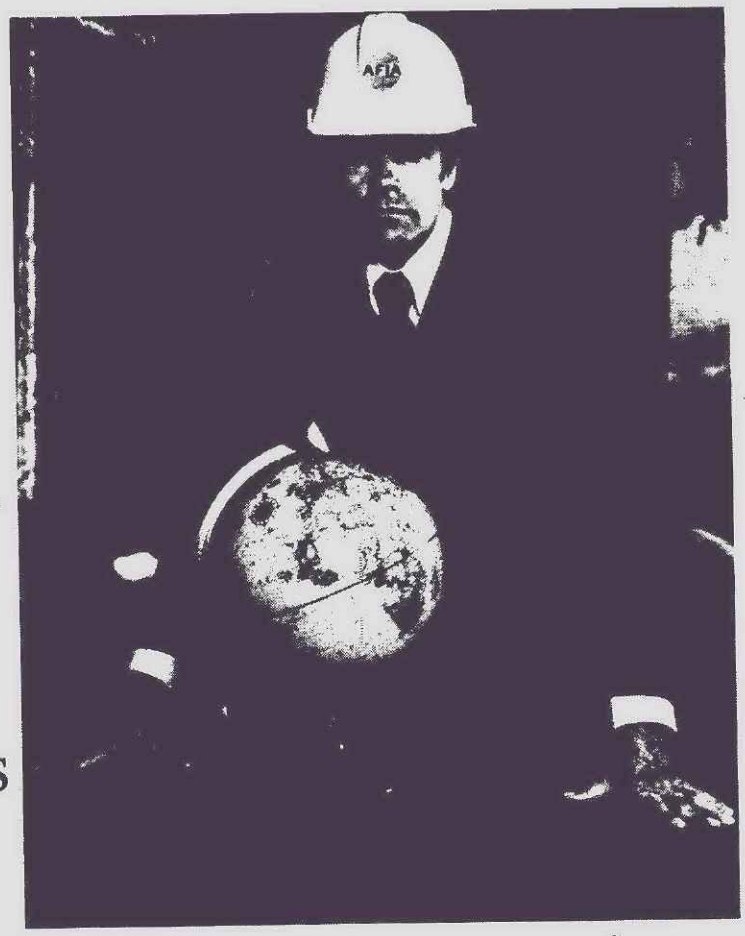

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Rep. Eckhardt

Sponsor is optimistic on no-fault prospects

By JERRY GEISEL

WASHINGTON—Federal legislation on no-fault auto insurance has a "reasonable likelihood" of passage during the current Congressional session, a key backer of the measure predicted.

Support from the Carter administration and a strong push by a big chunk of the insurance industry makes Bob Eckhardt (D-Tex.) a lot more optimistic about the fate of this bill. Several previous proposals died in Congress.

Rep. Eckhardt, chairman of the House consumer protection and finance subcommittee that controls the bill, said he expects the measure to reach the Senate floor by the spring of 1978. The full House probably will act on the measure two or three months after that, he said.

However, Rep. Eckhardt warned at an Insurance Information Institute luncheon that opposition from plaintiffs' attorneys will be "very strong." This was a reference, no doubt, to the campaign chest being amassed by the American Trial Lawyers Assn. to defeat the bill.

The first hurdle the bill faces is passage through the subcommittee. Mr. Eckhardt now is informally polling subcommittee members to determine their feelings on the bill. A subcommittee vote has not been scheduled yet, though some observers believe the vote might be as early as next month.

Under the proposal, states would have to meet certain minimum federal standards of no-fault insurance coverage. If the states failed to adopt those standards within three years, the federal guidelines would automatically go into effect.

A civil action could be filed if an injury suffered in an automobile accident resulted in permanent scarring, disfigurement or loss of bodily function.

In addition, legal action would be allowed if an injury prevented a victim from taking part in his or her usual activities for 180 days. Prior measures placed the cutoff at only 90 days.

Accident victims, under the proposed standards, would be entitled to at least $100,000 for medical and rehabilitation expenses and up to $12,000 in lost wages.

The Carter administration previously announced its support for the bill. ■

U.S., Russia deadlocked on insurance

NEW YORK—Another effort to end Soviet discrimination against American marine insurers has failed.

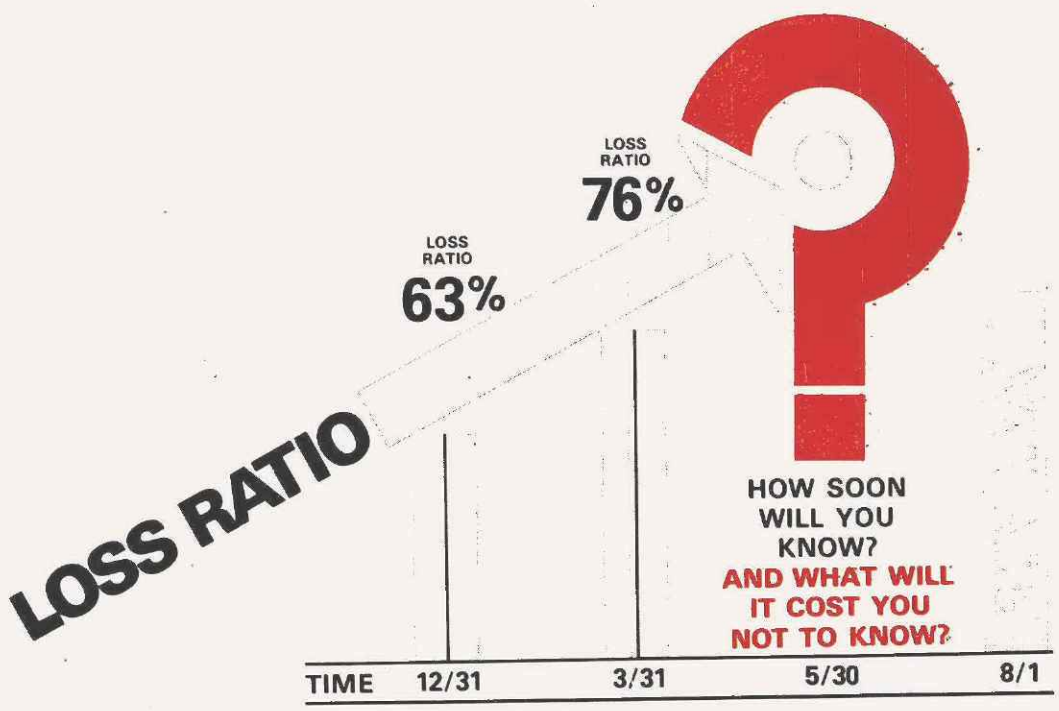
Two executives of the American Institute of Marine Underwriters told their members that a recent meeting with Soviet officials has failed to break the impasse.

"They have been playing games with us all along without the slightest intention of being reasonable," charged Thomas A. Fain, president of the American Institute of Marine Underwriters. "They will continue to discriminate against the American marine insurance market unless stronger U.S. government action is forthcoming."

Mr. Fain said growing amount of premiums covering cargo shipped between the U.S. and the Soviet Union is being unfairly kept away from American insurers.

The Institute warned it will ask the U.S. government to invoke sanctions against the Soviet Union under the 1974 Federal Trade Act.

The Institute represents the American marine insurance market. ■



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For top executives

Crump survey finds few common benefits

MEMPHIS — Term life insurance and medical coverage are the only common benefits for top executives at 58 companies responding to an E. H. Crump survey.

The employe benefit division of the Memphis broker sent questionnaires to companies ranking from 150 to 300 on the Standard & Poor's list of 500 companies.

Although Crump asked only about benefits for top executives, most companies indicated that benefits are essentially the same for all management personnel.

Thirty-seven companies provide group life insurance on a non-contributory basis. Five of them provide a flat benefit between $2,000 and $10,000, although these companies also offer a contributory plan.

The other 32 non-contributory plans provide benefits on the basis of salary level. Eleven of them provide an amount equal to the executive's salary, four provide 1.5 times salary, 12 provide twice the salary and five provide more than twice the salary.

Twenty companies provide term life insurance on a contributory basis. Only one company provides a flat benefit of $11,000. Four companies provide insurance equal to salary, 10 offer twice salary, one provides 2.5 times salary and two offer three times salary. Two companies did not outline the details of their plans.

The maximum amount of term life insurance under contributory plans ranges from $75,000 to $1 million; one company does not limit the amount of term life insurance that can be purchased.

Only two companies have permanent group life insurance. Both seem to combine permanent group life with the term program, Crump said, rather than providing a supplemental death benefit.

Eleven of the 58 responding companies reported insured income plans for survivors, although another eight companies offer similar programs as part of their retirement plans. Five of the 11 survivors programs are contributory, five are noncontributory and one provides 25% of income on a noncontributory basis with an additional 20% available on a contributory basis.

Not unexpectedly, all of the companies provide medical insurance to their management personnel. Thirty-two plans require executives to pay a portion of the premium.

Maximum medical benefits range from $25,000 to $1 million; four companies provide unlimited medical benefits. The most popular maximums for medical coverage are $50,000 (10), $100,000 (15) and $250,000 (17).

Twenty-nine companies pay all medical charges after a specified level is reached, usually $5,000 in eligible expenses or $1,000 of out-of-pocket expenses.

Forty-two companies provide a Medicare supplement for retired employes.

Long term disability programs are in force at all but four of the companies responding to the questionnaire. Maximum monthly benefits range from $1,200 to $4,000. The most popular benefit levels are $2,000 a month (10), $2,500 a month (13) and $3,000 a month (12).

Forty-one companies provide accidental death and dismemberment insurance in addition to basic life insurance. Fifty-three companies offer blanket accident insurance. The most popular accident benefit level is $100,000 (11) with $200,000 (10) as the second most popular.

Twenty-six companies offer dental insurance. Sixteen firms require preauthorization of treatment. ■

•

Copies of the E. H. Crump survey on benefits for executives are free. Write Gil L. Turchin, manager of administration and special risks, E. H. Crump & Co., P.O. Box 171377, Memphis, Tenn. 38117.

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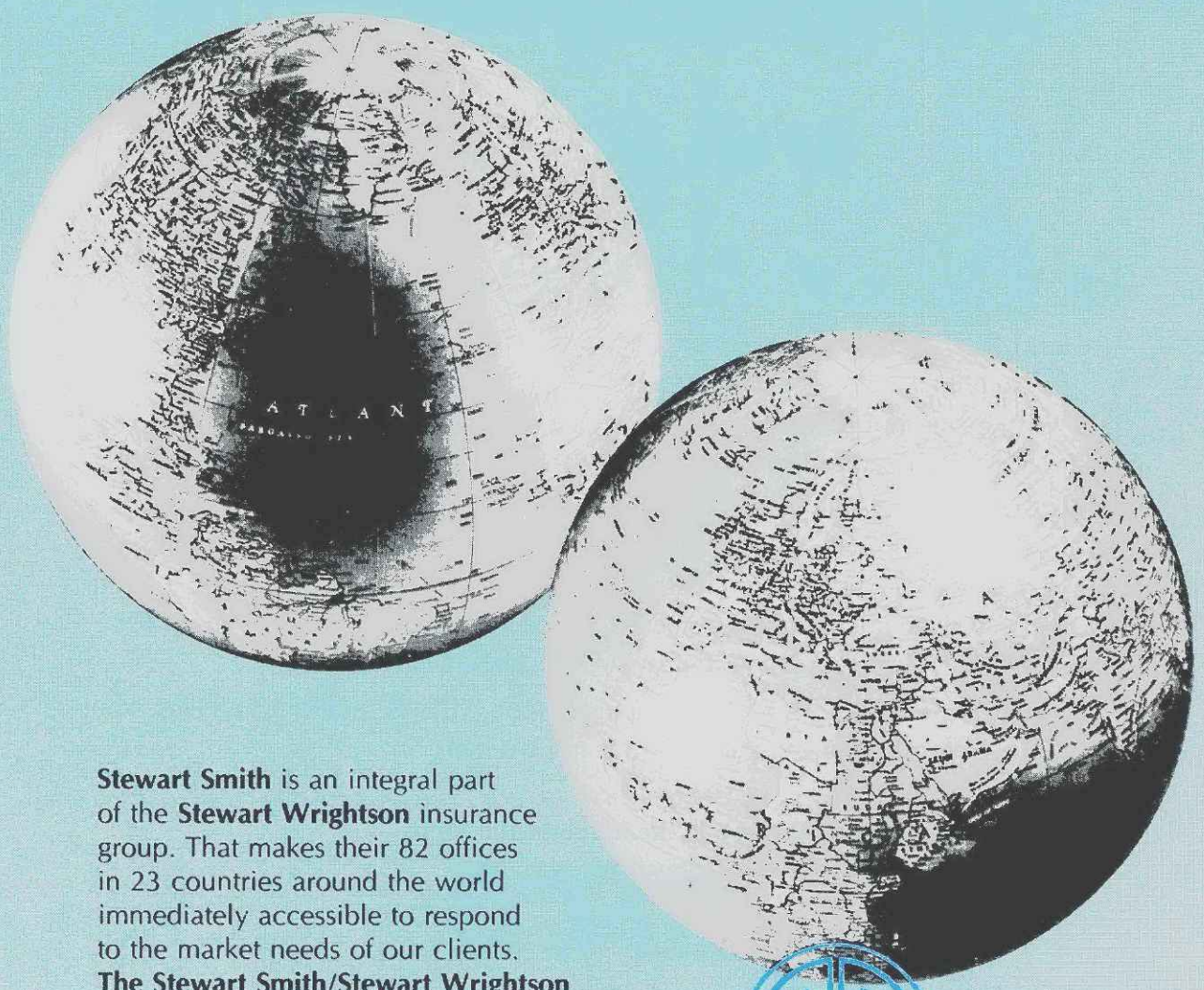

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M&M council backs Culver proposal

ROBERT GOSHAY: "Insurers will underwrite other risks as their reserves for (product liability claims) are freed."

By MARGARET LeROUX

SAN FRANCISCO — Marsh & McLennan's product liability council is throwing its weight behind legislation that would allow businesses to use pre-tax dollars to set up reserves for product liability claims, participants in the brokerage firm's second product liability symposium here were told.

Legislation favored by Marsh & Mac's product liability council is the bill sponsored by Sen. John C. Culver (D-Iowa) that would allow businesses to establish a self-insured reserve trust (SIRT) for product liability claims without having to pay taxes on money put into the trust.

The trusts should be a minimum 3% of gross annual sales, said Robert C. Goshay, vp and executive director of the product liability council, up to a maximum of 15% of sales.

"I don't believe government revenues will be adversely affected by the Culver bill," Mr. Goshay said. He predicted opposition by state insurance regulators over loss of premium tax income, but claimed that establishment of SIRTS would actually increase state revenues.

"Insurers will underwrite other risks as their reserves (for product liability claims) are freed," he said. This expansion of underwriting would result in more income for states from premium taxes than the amount of money businesses put into SIRTs, he added.

John F. O'Sullivan, vp and another member of the product liability council, was asked why the 3% of gross annual sale figure was chosen. "It's unlikely that businesses would put 4% to 5% into a reserve fund because profit margins (for specific products which could be involved in liability claims) are usually less than that amount."

The 3% figure will probably be changed in amendments to the Culver bill, Mr. O'Sullivan added.

The bill also carries with it a penalty for withdrawing funds for reasons other than product liability settlements or payment of claims. "This follows with the "income smoothing" prohibitions found throughout the Internal Revenue Code and the Financial Accounting Standards Board regulations," Mr. Goshay said.

Product liability council members emphasized their support for changing the tax laws affecting self-insurance as a solution to the product liability crisis. "The council isn't hopping on the tort reform bandwagon at this time," Mr. O'Sullivan said. "I don't believe tort reform is the ultimate solution."

The claims-made form of insurance policy, another attempt at dealing with the product liability crisis, was criticized by John P. McLaughlin, senior vp and member of the product liability council.

"Claims-made policies pass the burden of product liability problems back to the insured," Mr. McLaughlin said. Pricing of the claims-made policies is geared to equal occurrence basis policies within five years, he added.

Loss control, crucial to the solution of the product liability crisis, is not given sufficient attention at executive levels, Fred A. Manuele, vp of M&M Protection Consultants, told symposium participants.

"There is always a considerable difference between what executive management thinks is being done on product safety and what is actually being done," Mr. Manuele said.

He described a product safety report form developed for Marsh & Mac clients, an audit of safety and loss control procedures that can be used as a basis for approaching an insurance market for product liability coverage or for getting another quote on a product liability risk.

There is a need for product specialists at the corporate level, Mr. Manuele said. The opportunity is there for risk management to advance, he noted.

The symposium is the second of a series the product liability council will present throughout the U.S. The next symposium will be in Hartford, Conn., later this month with a third presentation scheduled for Milwaukee in October. ■

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Storm losses worry Dutch

LONDON — Dutch insurance companies are trying to hike storm premium rates after recent large windstorm losses and the fear of a similar catastrophe in the next few months.

Delegates at a conference held by the U.K. Reinsurance Offices Assn. sought to find if these risks might become uninsurable as an excluded peril.

But Joseph C. Tervaert, general manager (international division) of the Nationale-Nederlanden insurance group, said, "I do not think they will be excluded, as the Dutch companies are conscious of the dangers of this move since the government might step in to take over the cover.

"The trouble is that cover for windstorms is given as part of comprehensive cover, the premium for which is already considered high by the larger brokers, so it is difficult to persuade brokers and their clients that there should be an increase."

Ever since there were large flooding losses in 1953, the Dutch companies have excluded flood cover, which was taken over by the government as part of its responsibility for catastrophic events.

"We're pleased the government did this, as it means insurance companies can concentrate on looking after the safety of the population in the form of personal insurance cover for such incidents," he said. ■

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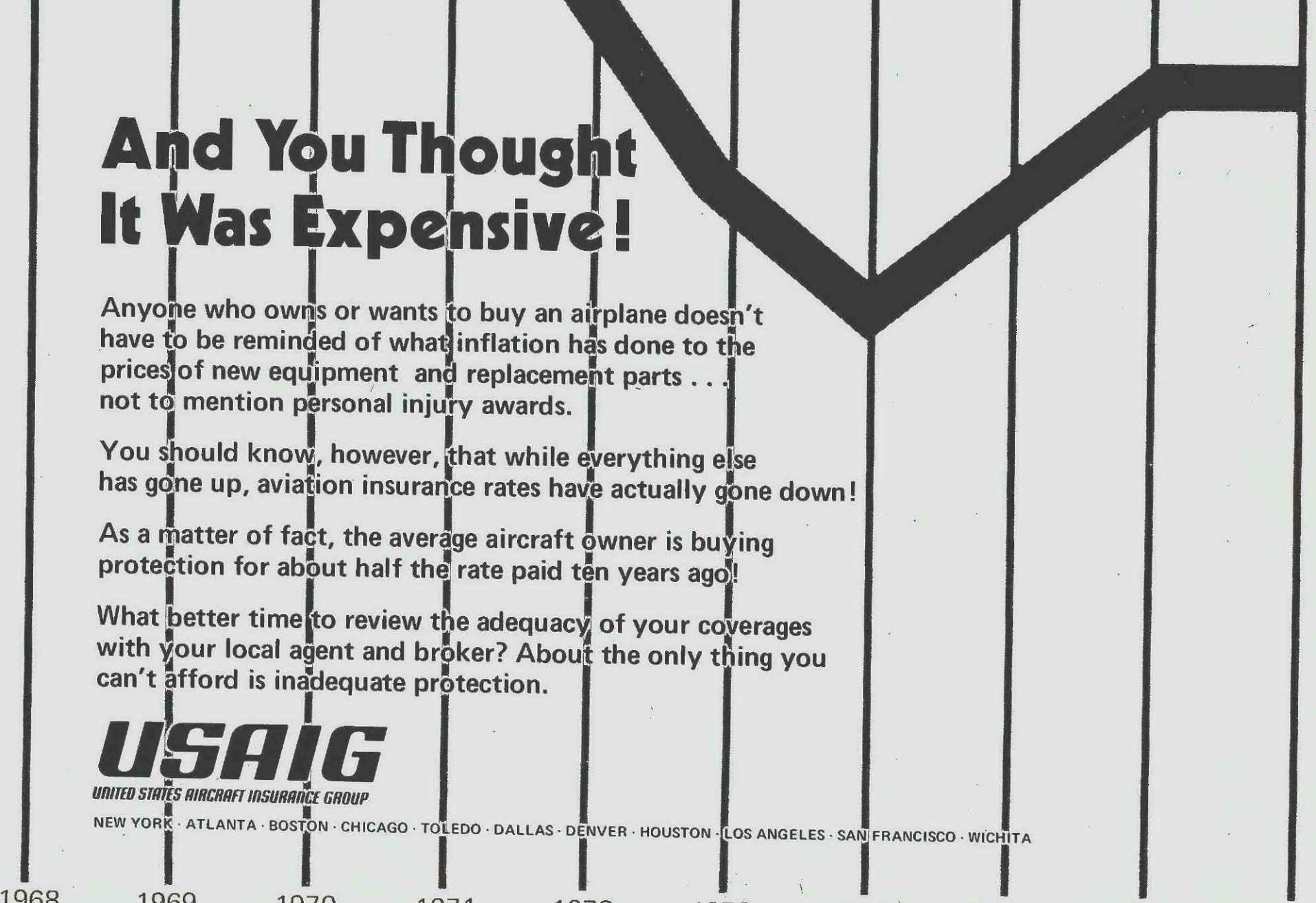

New accounting board rules endanger smaller pension plans, experts warn

NEW YORK—Pension plans will soon cost more and a significant number of smaller plans will fold in the resulting cost squeeze.

That's the assessment of industry experts commenting on proposed new rules requiring more financial disclosure from pension and welfare benefit plan operators.

The proposals are from the Financial Accounting Standards Board, an accounting profession rule-making body. Such firms regularly audit the $360 billion pension industry for reports required by the Internal Revenue Service, the Securities and Exchange Commission, state regulatory agencies and stockholders and investors. The changes in the FASB operating procedures for pension accounting, which have the effect of law for the nation's accountants, are expected to be issued Dec. 15.

Essentially, the plans call for four financial statements from pension operators: net assets available for benefits, changes in net assets available for benefits, accumulated benefits payable and changes in accumulated benefits.

The proposals also call for a description of valuation methods and assumptions, plan provisions, plan investments in securities of the sponsor, insurance contracts, funding policy, tax status, significant events occurring subsequent to the statement date and coverage of benefits by the Pension Benefit Guaranty Corp.

Industry experts warn that the additional reporting requirements will increase costs for smaller pension operators and force some plans to terminate. In the past four years, they note, some 15,000 pension plans have folded. These insiders blame ERISA itself for increasing a firm's costs to a point where it became more economical for it to end the plans.

"What they've done," explains one analyst, "is push the cost effectiveness for pensions beyond the pale. Naturally, a firm, especially the smaller, more vulnerable ones, will drop out if running the thing ends up draining their resources."

The higher operating costs resulting from the new FASB rules will only hasten the departure of even more plans, many analysts conclude.

The net effect of the FASB proposals, one senior economist with A.S. Hansen said recently, is that the only pension funds left in the next few years will be the very strong ones belonging to very large corporations. In relative terms, he added, only a small number of Americans will have the benefit of pension and welfare plans because of the increased operating expense forced upon them by increased disclosure regulations.

Currently, some 40 million workers are covered by private welfare and pension plans. The book value of pension and profit sharing plans last year totaled approximately $360 billion and represented at least 80% of the total tax-exempt assets currently under management in the U.S.

In defending the FASB proposals, Robert Van Riper, administrator for public affairs, contended: "When ERISA was created, new accounting problems that had not existed before came into being. Congress was concerned only with the employes in writing that law, with no concern for the accounting and reporting changes such legislation entailed. It is our responsibility now to make the adjustments necessary for the accounting industry to do its proper job."

Jules Cassel, project manager for the FASB, acknowledged that more than 500 letters critical of the proposed rules were sent to the board. Many questioned the effectiveness of the proposals, he said, and some commentaries will be incorporated into the final draft due in December.

"What this means," one pension consultant said, "is that the cost of operating a pension will rise as managers foot the bill for more paperwork. Another way of looking at this is that instead of providing for your employes in their old age, you're compelled to pump more funds into increased paperwork to satisfy some faceless regulator who may or may not understand the workings of a pension fund."

Richard C. Clevenger, assistant controller for Firestone Tire & Rubber Co. in Akron, Ohio, said if the proposed rules are adopted Firestone's pension fund must bear the burden for higher actuarial, audit and reporting costs, as well as the problem of presenting the new statistics to employes.

John A. Connois, a partner in Kwasha Lipton Inc. in Englewood Cliffs, N.J., estimates the new rules could increase by $100 million annually the cost of operating the nation's pension funds.

"It would make money for actuaries," said Robert C. Phillips, vp and chief actuary for Towers, Perrin, Forster & Crosby in Los Angeles. "But I'm against it because I don't think the extra work would be of any real value to plan participants."

Ironically, one economist noted, the FASB proposals are designed help the employe understand the financial standing of his or her pension and help investors and the public in their choice of various plans. However, the economist said, "these new numbers will be of little value to anyone." Moreover, he noted, the FASB proposals will have the effect of keeping those pensions now in place from increasing their benefits in the future.

"The rules are such," he said, "that even if you had a well funded and smoothly operating benefits program, you would be penalized if you increased employe benefits." He explained, "the trend to hold down benefit improvements will develop because when you improve benefits you increase anticipated expenditures but not your assets in hand."

> "What they've done is push the cost effectiveness for pensions beyond the pale." –Pension expert

Meanwhile, in Washington a spokesman for Sen. Jacob Javits (R-N.Y.), one of the leading proponents of ERISA, said the senator is studying the FASB proposal. "We expect to hold hearings in late September and October," the spokesman said, "and fully anticipate investigating the problems created by the FASB changes."

Sources within the House Education and Labor subcommittee on pensions, indicate that the FASB move could generate congressional intervention. "ERISA is a creature of Congress," noted one committee staffer, "and it's certain that some members will view interference from FASB as an intrusion."

House hearings are also expected in the fall. ■

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Explosion of new departments

Firms, schools rush to begin risk management

By JOANNE GAMLIN

LOS ANGELES—The soaring cost of liability insurance appears to be the most important force behind the rush over the past two years to establish risk management departments.

But rapid growth, dissatisfaction with present programs, concern over unprotected exposures, an explosion in the amount of work and qualms over relying too much on a broker are also factors behind the new departments in corporations, universities, state governments and hospitals.

"Vetco Corp. had been growing rapidly," explained Wayne Bergstrom, the first risk manager for the oil and gas equipment company in Ventura, Calif. The company's sales are expected to vault to $300 million in 1981 from approximately $117 million in 1977.

As a result of the growth in foreign, as well as domestic operations, Mr. Bergstrom said Vetco executives were worried that the company might be harboring exposures unknown to them.

Mr. Bergstrom said he was given only a generalized goal for his new job: to see that assets are properly protected at the lowest possible cost. No figures were attached to the objectives.

The skyward move of insurance costs was not the standout reason for the state of Washington's move last year to establish its first position of risk manager. Bob Styles, assistant director of services of the general department of administration, said his department acquired a new director in 1974.

"Investigating the insurance buying function, he became aware that under the state system of having each department draw up its own insurance requirements, there were both duplication of coverage and unprotected exposures," Mr. Styles said.

Discussion with the governor and members of the legislature resulted in a decision to hire a consultant to do a study on the subject of the state's insurance buying habits. The consultant's study recommended the hiring of a risk manager. And a bill was passed enabling Jim McLees, formerly insurance manager with CF Braun & Co. in Alhambra, Calif., to be employed.

Mr. McLees said that, in a manner of speaking, his job came with a set of goals "all within the classic format of risk management."

Some specific topics on which he must prepare responses by the end of the year are whether a catastrophe fund should be established to cover property damage exposures, whether an excess insurance program should be established for the state and the appropriateness of establishing reporting relationships.

In a similar vein, the University of Washington in Seattle began exploring the idea of hiring a risk manager several years ago when medical malpractice premiums for the institution's two hospitals began their steep ascent. Ray Riksanrude, public information officer, and one of the persons who was instrumental in the decision to establish a risk management department, recalled that malpractice premiums shot up about 100% between 1975 and 1976.

"On top of that, we were looking for another 100% leap from 1976 to 1977. This was the trigger that got things going."

The official stressed, however, that cost considerations were not the only force that led to the hiring last February of John Pettit as the university's first risk manager. An attorney, Mr. Pettit formerly worked in the office of the attorney general for the state of Washington.

"We also figured that if we put together an office of risk management, it would be easier to grab the attention of the university's top management and to focus it on the problems of soaring insurance costs," he related.

Mr. Ricksanrude noted that even before the hiring of Mr. Pettit the university was able to win legislation allowing it to self-insure and to establish a revolving fund for the payment of losses.

> 'We also figured that if we put together an office of risk management it would be easier to grab the attention of the university's top management . . .'

"Until the tail comes along, we can certainly make use of the money in the fund," he remarked.

Rhode Island Hospital in Providence, a 719-bed institution affiliated with Brown University, hired its first risk manager in July. He is Roland Loranger, formerly of the Hartford Insurance Co., who will administer the hospital's new self-insurance program for professional medical malpractice liability insurance.

The idea of employing a risk manager had been under study since last year, a spokesman said, three years after active concern began mounting over the steep increases in the cost of that coverage.

According to Frederick Lippitt, chairman of the board, the hospital's medical malpractice coverage jumped from $87,700 in 1973 to $843,000 in 1976. Although approximately $1,421,000 was paid by the hospital in those four years, only $18,600 was paid out in claims, the chairman pointed out.

Following the pattern of Rhode Island Hospital, the Santa Ana Unified school district went self-insured for public liability and workers' compensation this spring

Continued on page 46

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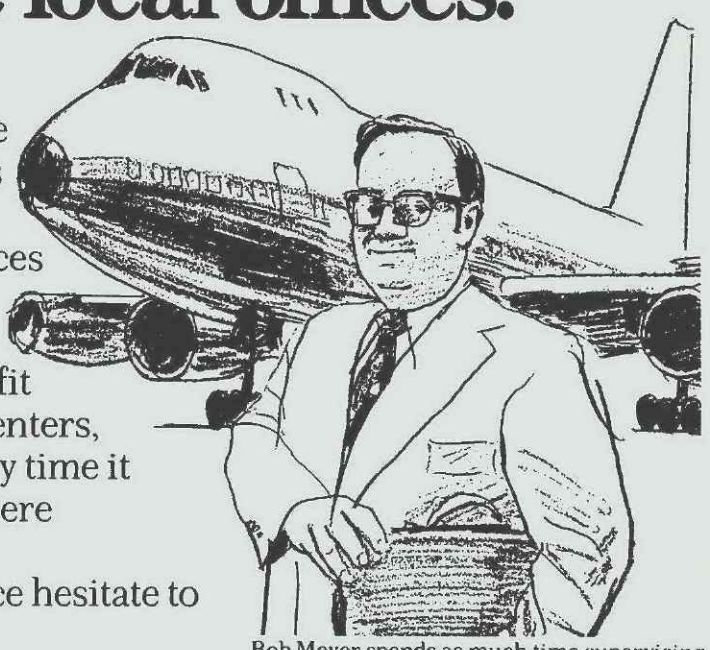

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New departments . . .

Continued from page 45

and summer and has just hired a risk manager to oversee the new program. He is William Boetcher who started work on August 15 for an advertised salary of between $1,835 to $2,091 per month.

In the private sector, too, the motivation for the creation of a risk management department seems to stem from the incredible increases since 1974 in the cost of liability insurance coverage.

Anthony Industries in Southgate, Calif., a swimming pool and motor home manufacturer, is in the process of recruiting its first risk manager to put some reigns on the cost of product liability coverage, said treasurer Brian Healy. Other goals of the new risk manager, he said, will be to reduce risks and to structure alternatives to conventional insurance.

Similarly, David Bass was recruited by Citizens & Southern National Bank, Atlanta, last December as its first risk manager after the financial institution decided to take strong measures to put a lid on rising bankers' blanket bond insurance.

"The job had been handled by an insurance administrator," said Mr. Bass, who formerly worked for Gold Kist, an agricultural cooperative. "It was a sort of clerical position since the major decisions were made by different high executives, including the senior vp and executive vp, who relied on Marsh & McLennan.

"The problem was that there was no one inhouse to scrutinize the insurance program in an objective fashion."

A secondary factor, he noted, was the passage of laws, such as ERISA, that affected the insurance program.

Jenny Jones, who at age 24 is the first risk manager for Max Factor & Co. in Hollywood, Calif., said that rapidly rising premiums also were the catalyst in the creation of her job this spring.

"Max Factor wanted a specialist who could monitor the insurance area on a day-to-day basis," she said, noting that in her case, corporate concern was focused on coverages other than liability.

However powerful, these forces contrast with the reasons why insurance buying departments were established in prior generations.

When Southern California Edison set up an insurance buying department several decades ago, it took the action because the insurance purchasing function demanded it, a spokesman said. He explained that men who worked in the department viewed themselves more as clerks than as world-wise insurance buyers ■

Cessna aircraft

$900,000 awarded in small plane crash

RENO—A Nevada jury awarded the family of a San Francisco man $900,000 and found Cessna Aircraft negligent for not providing safe restraint systems such as seat belts or shoulder harnesses.

The award was made to the widow and four children of John Eichstedt, an employe of the federal Bureau of Outdoor Recreation who was killed in the June 1972 crash of a Cessna light plane.

The jury absolved two other defendants, a Reno chartering service and the estate of pilot Gilbert Souza, who also died in the crash.

San Francisco attorney Gerald C. Sterns, who represented Mrs. Eichstedt, said the judgment was the largest of its kind against an aircraft company.

"While not precedent setting, the verdict says that the jury has found legal responsibility to rest with the manufacturer," Mr. Sterns said.

Cessna would not comment on the award. The spokesman indicated, however, that it is likely that the award will be appealed.

It is understood that Cessna has aviation liability coverage with Associated Aviation Underwriters (AAU) and excess coverage with Lloyd's.

During the 3½-week trial, Mr. Sterns argued that Cessna was negligent in not providing safe and proper restraint systems such as seat belts and shoulder harnesses.

The crash occurred in Galena Canyon on the outskirts of Reno. The plane was headed to the site of a proposed power line when it entered a canyon and did not have enough power to climb out. It crashed into a canyon wall, killing John Eichstedt and the pilot, although the other occupants of the six-passenger craft survived the accident.

Mr. Sterns, whose law firm of Sterns, Bostwick & Tehin, specializes in aircraft disasters, said during the trial that all occupants would have lived if the aircraft, a Cessna 206, had been fully equipped with safety harnesses.

Cessna argued that the plane veered sideways into a canyon wall and that no harness would have prevented the fatalities. It also said that the responsibility to provide safety systems lies with those who fly its planes.

Mr. Sterns said that light plane manufacturers have long refused to provide adequate safety systems.

"Statistics show that general aviation is eight times as dangerous as driving your own car," he said. He noted that Ralph Nader's group has been interested in boosting safety of small planes.

Starting next year, the FAA will require that shoulder harnesses be placed in the front seat of light planes, he said, "but nothing is being done about the back seats which need safety systems too."

John Eichstedt was in the back seat of the Cessna 206. ■

Consultant changes

San Francisco-based Warren, McVeigh & Griffin changed its name following the departure in late August of Dick Huntington from Warren, McVeigh's Newport Beach, Calif. office. Mr. Huntington is joining Ebasco Risk Management Consultants Inc., Newport Beach, effective Sept. 16, after about five years with Warren, McVeigh. He is the first risk management specialist to join Ebasco Services' Newport Beach office. Mr. Huntington was consultant to a number of hospitals that established in 1976 Multihospital Mutual Insurance Co., a Bermuda-based captive which moved to the Cayman Islands. Warren, McVeigh added two new consultants in the meantime, Allon Greene in the Newport Beach office and Steve Hause in the San Francisco headquarters. Mr. Greene was formerly with Corroon & Black. Mr. Hause was an account executive with Arkwright-Boston.

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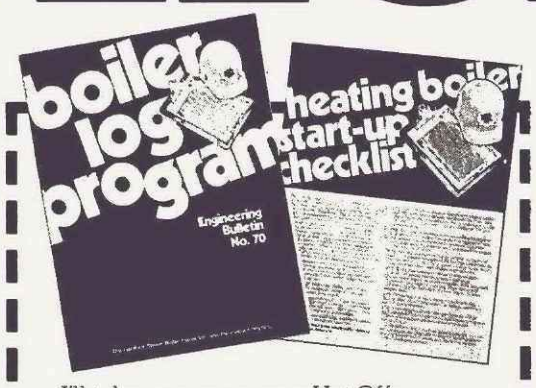

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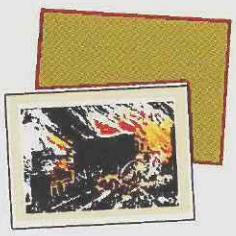

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Loss prevention actions crucial, but oil premiums to bubble up

LONDON—Loss prevention will have a major effect on insurance capacity for oil and petrochemical plants in the future decade, but rates are likely to rise because of higher concentration of values, according to a leading U. K. broker.

Charles R. Bowman of the Sedgwick Forbes group told the Reinsurance Offices Assn. at a seminar on oil in the 1980s that he expects many clients to be carrying even higher deductibles in the future than they do now, because of these factors.

"They will be looking for higher limits and wider coverage, and the world markets will have to be canvassed to meet their needs," he said.

"Markets which have competed against each other will have to find a way of working together if we are to provide the service the oil industry wants. But attention will have to be given to adequate rating if the insurance market is to continue to be able to protect the assets of the oil companies."

Supporting the need for risk management developments in the oil industry, Mr. Bowman declared: "Capacity can be generated if a particular client has a better loss prevention program than the average risk.

"There are many oil companies who spend a considerable amount of time and effort on identifying plant risks and on planning emergency procedures. It's important that the insurer and broker, or at any rate one of them, is involved at the design stage so that the maximum number of safety devices can be included in the plant.

"But we recognize that oil is a high hazard industry, and I accept that if a plant were to be built which was 100% safe, it almost certainly wouldn't work."

Mr. Bowman forecasted increased demand for business interruption coverage, which is still not bought by many large oil corporations, for it is becoming more obvious that a small material damage loss can cause a very large loss of profits.

This can happen either because of the time needed to replace a damaged item, or because of environmental legislation which can shut down a plant until it is investigated by a government body, he said.

Many small oil companies might want such insurance as they could not make up loss of production as easily as larger corporations with several plants and more capacity available.

There will also be a demand in the 1980s for more sophisticated insurance programs for the oil and petrochemical industry, he predicted, because it is becoming difficult to separate marine and nonmarine risks and combined placings will be more likely.

Demand is also on the increase for general third party liability coverage, and market capacity is continually having to be raised, such as for aviation refuelling coverage, where a Boeing 747 or Concorde disaster could lead to huge third party claims.

The aviation market has been asked to help by providing such policies excess of substantial general third party liability (including refuelling) limits, and it is now possible to place limits of almost $200 million.

Clients operating refineries with many years of no-loss experience are reluctant to have their premiums hiked just because of losses elsewhere in the industry, said Mr. Bowman, who thinks insurers should rate both oil and petrochemical plants, as well as liquid natural gas plants, separately rather than spread the impact of losses over the whole industry.

The creation of captives for the oil industry was examined by Mr. Bowman, who pointed out: "It must be borne in mind that many oil companies are as large, or larger than, many insurance companies and they should therefore be encouraged to practice self-insurance.

"The advent of captives has helped to increase capacity. For example, treaty reinsurers can offer protection on a worldwide basis to captives, and so allow the capacity of another section of the insurance market to be put to use.

"I know there are many underwriters who are not keen to support mutuals or captives, but in both cases there is often an improvement in the loss record because extra consideration is given by them to loss prevention techniques."

Dennis F. Dew, deputy chief insurance manager with Shell International in London, agreed that some underwriters unnecessarily condemned self-insurance. But he also believes that large corporations do not require the traditional levels of coverage for losses they can easily absorb. It is not realistic for people to think this insurance philosophy affects the market adversely, he said.

The solution is in the hands of international insurers, said Mr. Dew, who added: "How many companies are able to write oil risks, but refuse to do so? If the international market does not respond, then there will be an extension of mutuals." ■

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How to cut LTD cost

WASHINGTON—One sure way to save money on the cost of an individual disability income insurance policy is to choose a longer elimination period which is commonly referred to as a "benefit waiting period."

That's the advice of Arlene Lilly, information specialist at the Health Insurance Institute.

"The longer this period is," Ms. Lilly points out, "the lower the cost of the policy designed to provide you with a regular income if you become disabled and unable to work." ■

PBGC extends form deadline

WASHINGTON—The time period for using the Pension Benefit Guaranty Corp.'s premium payment and annual report forms, the PBGC-1 package, has been extended from Sept. 1, 1977 to Dec. 31, 1977.

After that, however, employe benefit plan administrators will file their annual report with the Internal Revenue Service on the recently revised Form 5500 series.

Annual reports filed in 1978 for a plan year ending before Dec. 31, 1977 will continue to be filed with the PBGC, using the current Schedule A of the PBGC-1 form, said Matthew M. Lind, PBGC acting director. ■

Iowa fair insurance spins on a carousal of conflicting claims

By TOM WALSH

DES MOINES—Since 1854, Iowa farm families have been packing up their kids, their barnyard beasts and the best of their kitchen recipes to head to this city for the Iowa State Fair.

An estimated 100,000 fairgoers explored this year's August ritual —a dazzling collage of activity including tractor pulls, rolling pin throwing contests, livestock shows, stock car sulky, motorcycle racing and carnival rides designed to rearrange stomachs, midway hucksters, musical entertainment and enough junk food to please even the most discriminating palate.

But now the fair is over—the blue ribbons hung on bedroom walls, the fairgrounds layered with corn dog sticks and snow cone cups.

Fair officials are happy to have survived another grueling year, but their period of R&R may be cut short as a Dec. 1 expiration date for the fair's liability insurance package—now written by American States Insurance Co. of Indiana—draws near.

Despite recommendations by the fair's insurance consultant that the present coverage be continued based on 12 years of experience, a controversy is brewing both within the fair management and through efforts by other brokers to win the coverage away from American States.

"We've been paying through the nose for the past several years," said fair director Jim Taylor. "Last year, $36,000 was budgeted for insurance premiums, but the final cost wound up to be $42,000. And that was with a $10,000 deductible. I've been told from a couple of sources that these rates are very much out of line."

Mr. Taylor, who took over the fair management Feb. 1, felt the cost was so questionable that he ordered W.W. Kitchell Inc. of Des Moines, the Iowa State Fair's insurance consultant, to compile a risk record to present to other insurers who might want to bid on the fair's business.

While compiling the information requested, Wes Kitchell is arguing strongly that the present coverage be maintained.

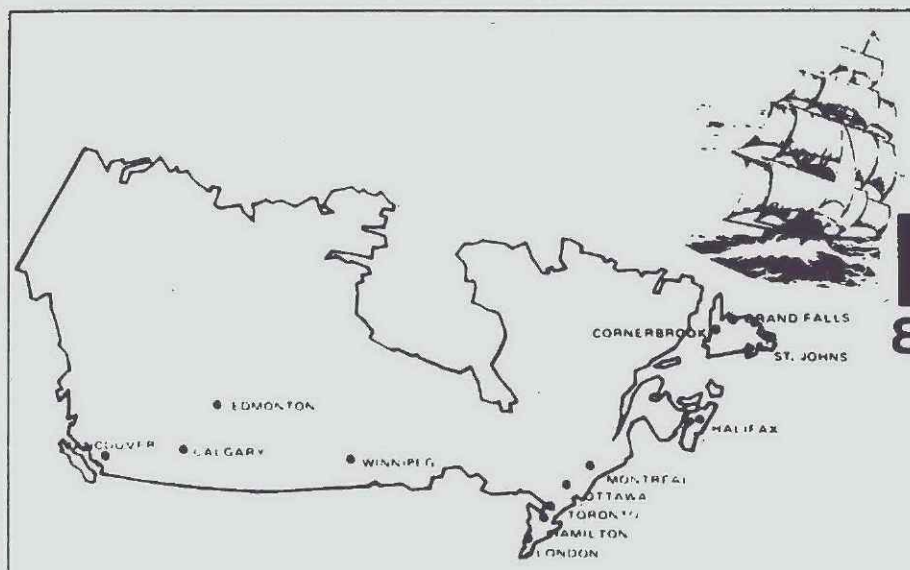
"The best indication that the insurance has been handled properly is that it's been with the same company for 12 years," Mr. Kitchell said. "Every three years we've taken new bids through the Financial Guardian Insurance Agency in Des Moines and American States still writes the coverage. Other insurers either offered less coverage or wanted more money."

One broker actively seeking to woo the fair coverage away from American States is Haas-Wilkerson-Wohlberg of Kansas City. Officials of the firm have been openly critical of the high deductible and have offered a policy to the fair board that includes a $100 bodily injury deductible.

For 30 years the Kansas City broker of showmen's coverage has been involved in writing coverages for outdoor amusements. Since April 1976 the firm has administered insurance programs for members of the International Assn. of Fairs and Expositions. It already insures major fairs in Dubuque, Davenport and Cedar Rapids.

In May, Haas-Wilkerson-Wohlberg presented a cost and coverage summary to Wes Kitchell, offering the fair a $1 million combined single limit general liability policy covering premises and operations, contracts, incidental malpractice, products and a boat ride amusement considered a special risk. Based on estimated receipts of $914,000, the premium for coverage with a $100 deductible is $33,893. With a $2,000 deductible the premium would be $26,885. Both offers also included a $1 million auto policy for state fair vehicles

Continued on page 50



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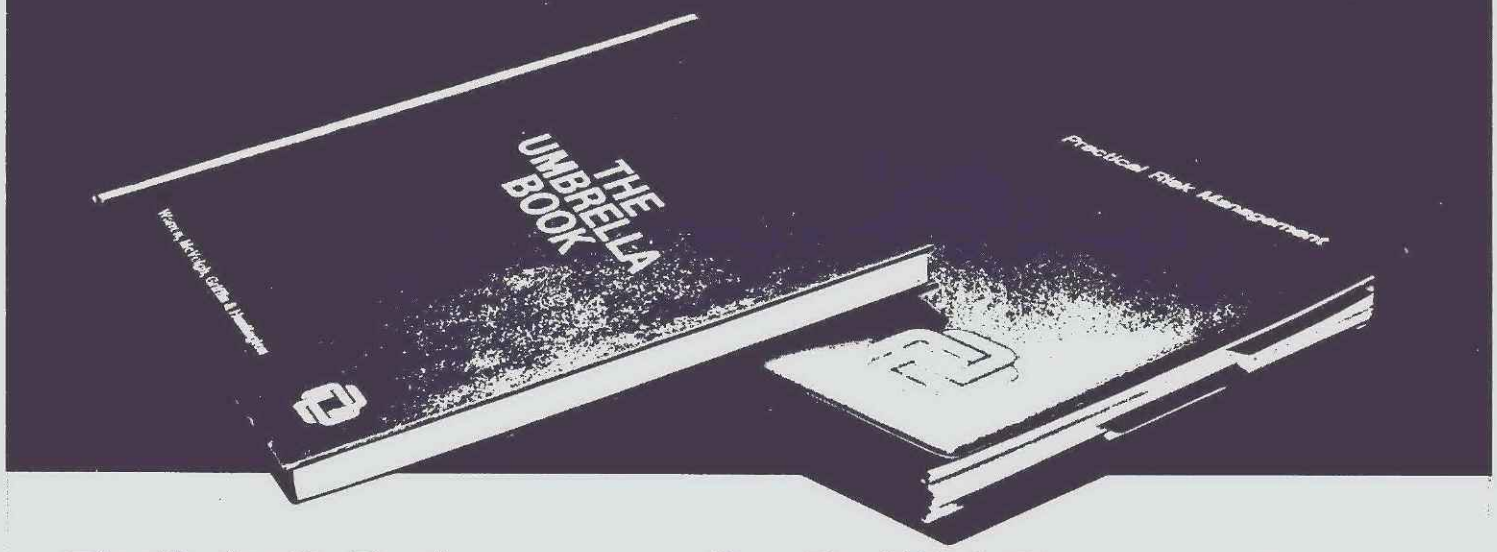

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Fair controversy . . .

Continued from page 49
for a premium of $1,713.

The policy now written by American States includes a $25,000 deductible, an increase of $15,000 over the terms of the policy written for the 1976 fair. Its $1 million coverage for bodily injury and $50,000 for property damage has a price tag of $35,909. Auto coverage boosts the bottom-line figure of this year's agreement to $37,337.

"We went to the $25,000 deductible in an effort to hold down costs," Mr. Kitchell said. "And because of a change in American States' rating system, we did receive a rebate on the premiums we paid last year."

The rating system change, Mr. Kitchell says, was made by American States under the pressure of competition. Once figuring premiums on a rating basis of total gross receipts ($1.96 million in 1976), the policy is now rated based on $1 million of paid admissions. The shift reduced the fair's premium for 1976 coverage from $37,337 to $23,226. About the time Haas-Wilkerson-Wohlberg offered its insurance package, the fair received the $14,109 refund.

"I don't think Jim Taylor, the fair director, is pleased with the ethics of a company that didn't alter its rating system until it was backed into a corner," Mr. Kitchell said.

Ethics aside, the controversy at this point centers on Wes Kitchell's contention that the fair board needs broad form comprehensive general liability protection due to the existence of unlimited tort liability in Iowa.

"In other states, where the fair is an appendage of the state government, fairs often operate under limited tort liability and are therefore easier to rate," Mr. Kitchell said. "In Iowa, we must face the fact that the unlimited liability law hasn't been tested—that there are unknowns in risk exposures and no one can tell us what extent of liability the fair board might have to undertake. For this reason I think it's important that the fair utilize first-line, standard underwriters, and I would hope that it would never have to go to a substandard insurance market."

Bill Wilkerson of Haas-Wilkerson-Wohlberg feels Wes Kitchell is making too big an issue of the unlimited tort law in Iowa.

"Not being an attorney, it is impossible for me to assess Iowa's unlimited tort law," he said, "but as a layman, it is difficult for me to believe the statute would extend the state fair's liability beyond the exposure of the various fairs we currently insure in the state. Enabling legislation eliminating governmental immunity does not alter the basis upon which negligence is determined, and for this reason our procedures in rating the Iowa State Fair does not vary from any other fair in the state."

> 'I don't think . . . the fair director is pleased with the ethics of a company that didn't alter its rating system until it was backed into a corner.'
> –Insurance consultant

Mr. Wilkerson also strongly disagrees with Mr. Kitchell's assessment of the carriers writing coverage for Haas-Wilkerson-Wohlberg as "substandard."

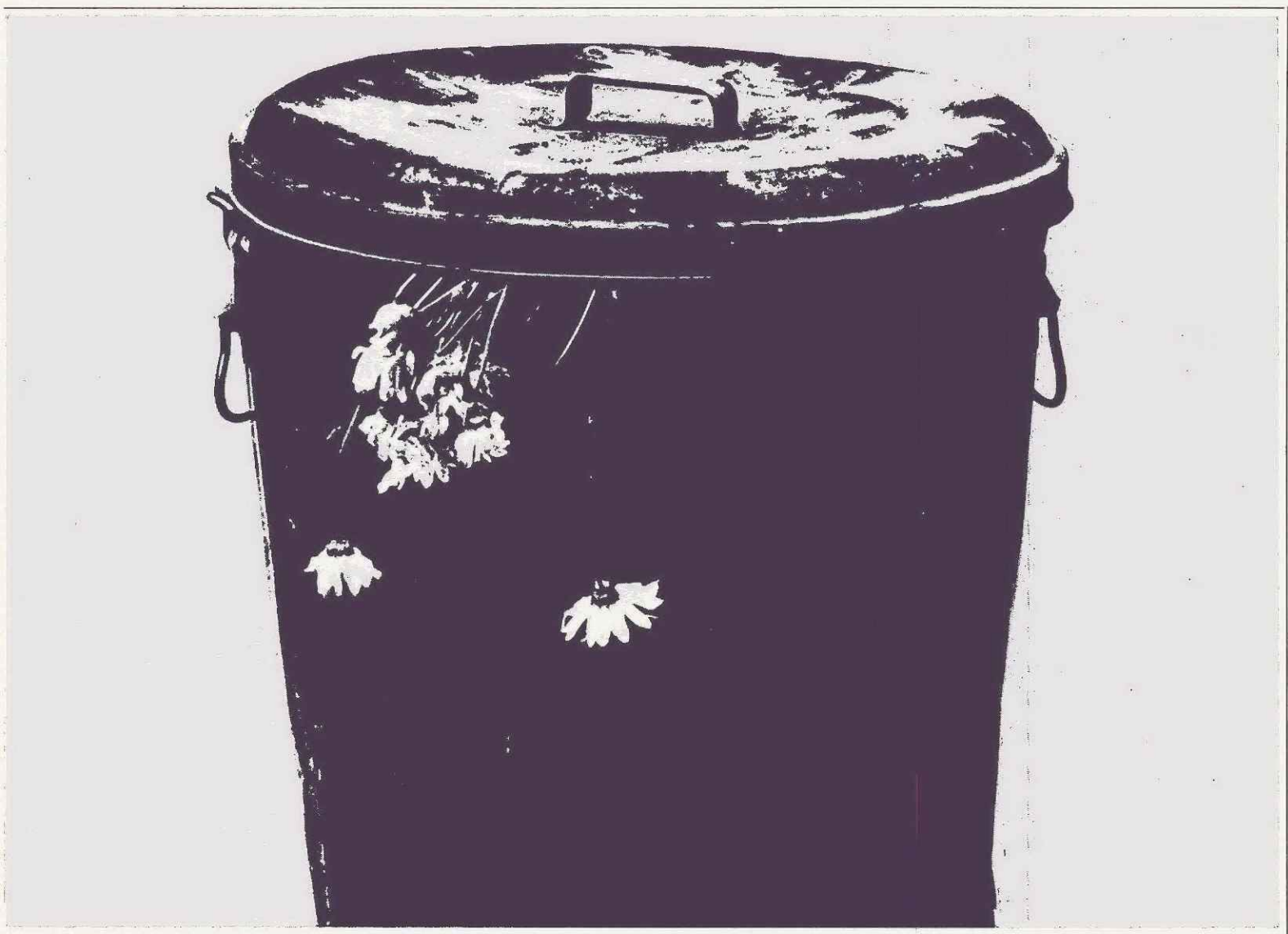
"We do not consider the insurance coverage or the insuring carriers to be substandard in any respect," Wilkerson said. "The Best's rating of both National Union and the Lexington Insurance Co. substantiate the quality of their operations. These carriers are providing coverage for both carnival and automobile racing exposures at the Iowa State Fair through our office."

In a June 10 report to the Iowa State Fair Board on the proposal made by Haas-Wilkerson-Wohlberg, Mr. Kitchell pointed out all carriers involved were top rated by Best's. He also noted that American States, the present carrier, has a slightly lower financial category rating than National Union, the primary carrier of the Haas-Wilkerson-Wohlberg package, because of their size.

"This is $25 million to $50 million in assets compared to $100 million or more," Kitchell told the board, also noting that the excess carrier—Lexington—was not admitted in Iowa and could only offer excess coverages through an Iowa agent. Because of this, Mr. Kitchell said, "we could not examine their forms (or) offer help on their terms and conditions."

"The state fair is not threatened with losing its insurance coverage now," he said. "Change companies and get into a bad loss situation, and the company may pay off and send out a cancellation notice."

Meanwhile, Bill Wilkerson says his firm will continue to pursue the state fair's business, despite what he terms a "frustrating" effort to date. ■



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Occidental reopens part of building

LOS ANGELES—The 20th and 21st floors of the Occidental Center Tower building, damaged in a $1.5 million fire last Nov. 19, have been restored and reopened, according to Arch Robinson, vp, Occidental Center management and services for Occidental Life Insurance Co., the owner of the structure.

The predawn blaze destroyed about 10 offices on the 20th floor which were occupied by Transamerica Financial Corp.

The fire caused heat, smoke and water damage to the 21st floor offices of Transamerica insurance group.

Mr. Robinson said that the two floors have been restored to like-new condition and that in one respect the floors benefited from the fire because the two companies, working the Occidental and the redecorators, were able to redesign their areas for more effective space utilization.

He said that although several offices were destroyed, a number sustained only moderate damage due to the design of the center and wherever possible, workmen salvaged furniture, office machines, file cabinets, paintings and personal possessions. ■

Searching for a job? Try cities

SACRAMENTO — Job seekers who hope to find a good risk management opportunity on the West Coast had better start thinking public sector.

Most of the help-wanted advertisements in California newspapers in the last three months have been for counties, cities or school districts that seek to hire their first risk manager.

Populous Contra Costa county, which is near San Francisco, is currently collecting applications from job candidates for the first risk management position in its history. The job that pays between $24,912 and $30,288, is expected to be filled by early November, a spokesman told *Business Insurance*.

Contra Costa county, it might be noted, is waging quite a campaign to locate its first risk manager. It has advertised the opening in the Wall Street Journal, the Los Angeles Times and *Business Insurance* magazine.

Likewise, the city of Simi Valley, Calif., is talking to applicants for its first risk management position. The job, which pays between $1,030 and $1,430 a month, should be filled by mid-fall according to a spokesman.

Stanislaus county, Calif., on the other hand, has just hired its first risk manager. He is Richard McElligott, who in the past has served as risk manager for San Diego and Orange counties. Mr. McElligott will start his job, which pays between $21,804 and $26,436 a year, in September.

The Santa Ana Unified School District also brought in its first risk manager, William Boettcher, not long ago. Mr. Boettcher was hired, according to a spokesman, for probably the same reasons that the other public entities are actively recruiting their first risk managers. The district went self insured for public liability and workers' compensation this year in an effort to stem the racheting cost of these insurance coverages. This job pays between $1,835 and $2,091 a month.

The trend for risk management positions to be found in the public sector is hardly confined to California, however. Pierce county in Washington state, for instance, recently named Mike Panagiotu to be its first official acting risk manager at an annual salary of $24,000.

Mr. Panagiotu explained that the word "acting" is part of his title only because of county budget difficulties. Starting January 1, he said that the word will be dropped and that he will receive a considerable jump in pay —up to $30,000.

A man who has not direct background in risk management, Mr. Panagiotu said that compensation, present and future, played no small role in his decision to apply for the Pierce county job. ■

Hall acquisition

Frank B. Hall Co., Briarcliff Manor, N.Y., acquired Welch & Smith Inc. of Seattle for an undisclosed sum. Frank B. Hall is one of the nation's largest international insurance brokerage firms, with 62 offices in the U.S. and 57 affiliates overseas. Welch & Smith is a general insurance broker in Seattle, Alaska and Colorado. Neither firm would provide information on assets, business volume or net worth.

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london line

High-value coffee beans waylayed enroute; result is $12 million loss

By JOHN H. MILLER

LONDON—Tremendous losses face marine insurers in the U. S. and several European countries after police unmasked a $12 million fraud over international coffee shipments which never reached their proper destinations at ports around the world.

Investigators at Lloyd's have found that the goods were sent from Zaire to commodity dealers in various foreign centers. But thieves switched the high-value loads of coffee beans with the aid of stolen documents while they were being held in temporary storage in Uganda.

Then they rerouted them to new destinations in the U. S. and elsewhere for sale to eager buyers who never realized the deception that was being played on them.

Several months later claims for the lost shipments are reaching underwriters in the U. S. and other insurance centers, including London, France, Holland, Belgium and Germany.

The U.K. Salvage Assn. is cooperating with police and other investigators in a worldwide bid to trace the missing shipments. It is feared the swindle may reach record levels before all the stolen cargoes are recovered. Some of them have already been located in port areas at New York, Rotterdam and Antwerp.

But the risks were spread so wide that individual claims are still trickling in to cargo underwriters in many centers. Police are still trying to evaluate the full extent of the swindle, which is believed to have been masterminded by a gang of Pakistani businessmen with illicit trade links in London and other leading European port cities.

Swedish markets

Swedish insurers obtained $125 million last year from marine and transport coverage, with both sectors likely to show some underwriting profits. Strong foreign competition has been forcing premium rates to fall below desired levels, but local shipowners in Stockholm have stayed with their domestic market in many cases as they prefer solid and service-oriented coverage rather than going to the cheapest layers, according to the Swedish Insurance Assn.

Risks in moving goods to Arab countries are examined in the SIA's survey of claims, which points out that the shortage of efficient ports in those areas, together with primitive unloading devices, can lead to much greater damage than would occur in Europe.

Loss prevention measures are now being studied by Swedish underwriters who have suffered from pilferage losses on a large scale with products sent to Middle East destinations.

CU improves

Better results in all lines except workers' compensation have been reported by Commercial Union for its U. S. activities in the first half of 1977. Its statutory operating ratio dropped from 107.7% to 104.3% compared with the same period last year, and underwriting losses fell from $32.5 million to $13.2 million over the comparable time.

Underwriting losses are still lowering overall results in the U.K., through subsidence and general liability claims, and in western Europe where it has been found impossible to get adequate rate increases in the Netherlands for auto cover. But gross profits rose because of the improvement in U. S. business, which showed a statutory underwriting profit in the second quarter this year of $2.1 million, the first time this has happened for three years with Commercial Union.

General Accident has also returned good U. S. results with the operating ratio falling from 107.5% to 102.2% for the first six months 1977 as a result of better performance in its auto business.

U.K. riots

Political riots in two British cities have led insurance companies to review their coverage for damage caused by agitators from extremist left and right wing factions that clashed despite battles by police to keep them apart.

It is the first time defense facilities such as riot shields have ever been used by uniformed officers under the control of Scotland Yard.

But the insurance companies decided that so far the damage, although running into many thousands of dollars, has been on too small a scale to call for any change in their normal premiums.

Facilities for protection against riot, civil commotion, strikes, labor and political disturbances are included as a matter of course in insurance policies except in northern Ireland where terrorist bombings are too frequent.

But the situation in London and Birmingham, where scores of people were injured and many shops damaged during the weekend of August 13-15 in local clashes between provocative extremists, is being watched in case it escalates.

Prime Minister James Callaghan has called for demonstrations to be kept on peaceful lines, so it is hoped police chiefs will be able to keep the problem under control.

It has been confined so far to small townships on the populous fringe areas of London and Birmingham where conflicts have developed over the growing number of immigrants from overseas countries which Britain administered before they gained Third World independence.

But under a 109-year-old law covering damages caused by riots, the police authorities can be sued for compensation by citizens who feel the disturbances were not put under sufficient care.

Hard to swallow

This may be hard to swallow, but digestive diseases now represent the number one cause of hospitalization in the nation. A Health Insurance Institute analysis of government figures shows that digestive diseases rank third in causing economic loss. Only cardiovascular diseases and accidents cause greater economic loss, says the institute. Overall, digestive diseases affect some 13 million Americans.

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New British rules to regulate brokers

LONDON—Insurance agents and brokers in Britain are to come under new supervisory rules which have just been introduced by the U.K. government.

Brokers will have to enroll in a state-approved body to be known as the Insurance Brokers' Registration Council and will be called on to comply with strict regulations for financial solvency.

The aim is to eliminate a small number of unacceptable "rogue brokers" who have been soliciting premiums, largely for domestic life insurance, without being fully qualified.

Discussions to protect insurance buyers began two years ago. The new law will mean that the formal title of insurance broker can only be applied to firms or individuals on the approved list.

Companies or individuals operating as Lloyd's brokers, together with the large brokerage firms which are already recognized as reputable experts in placing risks, will automatically be approved under the new scheme. So will many thousands of small brokers who have been in business successfully for many years.

But new insurance agents or brokers will have to prove they can comply with the rules for solvency and professional conduct before they are accepted by the Registration Council. This will involve proof that they are independent from any insurance company so that they can give impartial advice to their clients.

Francis Perkins, chairman of the British Insurance Brokers' Assn. said, "The new regulations will protect policyholders and will enhance the standing of U.K. insurance brokers both at home and internationally. The value of these standards is reflected in the fact that the brokers' share of U.K. domestic business generated for the insurance industry is more than 50%. They are responsible for more than 80% of overseas business underwritten in the London market."

Under parliamentary approval the new laws come fully into force by 1980.

Trade Secretary Clinton Davis explained, "Anyone taking out insurance needs help to identify the right policy and get the best value for money. So this Insurance Brokers' Registration Act is good news for the industry, as brokers will need in future to meet stringent requirements over their professional standing." ■

San Diego drops policy

SAN DIEGO—The city of San Diego has discontinued all its public liability excess coverage as of Aug. 1, according to Robert G. Walters, risk manager.

Mr. Walters told *Business Insurance* that as of now the city is totally self-insured for both workers' compensation and public liability.

Indeed, he said that about the only insurance the city can boast of is for property coverage. And it carries what he described as a "high" per occurrence deductible of $10,000.

He also noted that he has hull coverage on two vessels owned by the city.

The discarding of insurance coverages has been a "step-by-step" process, begun in 1969, he said.

Mr. Walters described the action as "methodically deliberate, resulting from calculated risk analysis and the creation of fiscal alternatives.

"It is in no way a panic reaction," he stated. ■

Coverage for VD

If you have any health insurance, you are routinely covered for the expenses of treating venereal diseases, says the Health Insurance Institute. The majority of companies provide coverage for this treatment as they would any other illness. A small portion handle the coverage by reviewing each case individually at the time of the claim.

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Says U.K. specialist

Safety is key to airline renewals

By JOHN H. MILLER

LONDON—Optimism is growing that premium rates in the aviation market may not rise as much as some people feared in recent months, unless there is some further catastrophe like the Tenerife disaster to shake underwriters' confidence.

Risk managers can often play their part in the control of so-called "attrition losses," such as engine claims or fuselage damage, but the major impact on premiums will still depend on the continuance of good safety performances.

Anthony H. Bolton, a U.K. broker specializing in aviation coverage, says:

"Although the London market is trying to get rates up, there is still overcapacity for the airline business at the moment. U. S. brokers have a wide market at their disposal and may be able to obtain renewals at rates which show little change, even though in London they may be rising.

"There is no guarantee that there will not be increases as most London underwriters seem to want to get rates up. But there are signs at the present time that they are losing their shares of some U. S. business to the domestic markets in North America and also to the European market.

"The situation could change suddenly because aviation can become a very tight market. Many airlines have bought policies not due for renewal for another two or three years, and will be insulated against rate increases unless their own individual records suffer. Those airlines whose renewals are due in the next 12 months may be facing higher rates, or, at best, renewal as before.

"If in the next few years there is a low incidence of loss, without any catastrophes, by the time the fortunate airlines' renewals come round, the market may have stabilized and perhaps be on a downward trend again. There is no easy answer to the problems facing brokers and buyers. I only hope the market does not overreact in this situation and try to recover their losses too quickly from too few airlines."

Mr. Bolton, director of C. T. Bowring & Co. (Insurance) Ltd., explained that knowledgeable sources put the annual worldwide aviation premium income at $400 million.

This includes all the premium developed not only by the airlines, but by the manufacturers, airport operators and the general aviation sector.

But it still ranks some way behind the premium generated by plate glass insurance in the U. S. alone which is believed to be in the region of $500 million.

So if the passenger liability claims from the Pan Am/KLM collision at Tenerife, where more than 570 people were killed, reach huge proportions which might lead to settlements close on the $200 million mark, this would swallow as much as 50% of aviation income.

"There is no other class of insurance business where so high a proportion of the total available income is exposed to any one accident or loss," he said. "In the marine business it might be as high as 10%. In non-marine, there might be a tornado or windstorm loss of 5%, but in workers' compensation the proportion exposed to any one loss is probably less than one-half of 1%.

"The major accounts in aviation, covering airlines, manufacturers and to a lesser degree airports, are unlikely to change much and usually every aviation underwriter knows at the beginning of each year what business he wants to write."

Elimination of attrition claims, such as minor damage to wings or fuselages, engine claims, or heavy losses to cargo and baggage, can be a key factor in reducing premium costs.

Recently Mr. Bolton told a U.K. conference organized by the Keith Shipton risk management group: "Risk managers or insurance buyers in the aviation do have a duty to try and understand the practical workings of our market.

"After all, they are responsible for spending large amounts of their corporations' money, and they should be able to satisfy themselves and their senior management that the money is being spent wisely.

"Buyers who look no further than the premium charge levied on them are overlooking some very fundamental factors. Not all policies are worded the same. If the wording is not tailor-made as far as possible to individual clients' needs, then it may not be a good buy.

"If a buyer can increase his recovery potential from any individual loss by means of wording improvement, that is just as effective a saving to his company as an equivalent reduction in his premium at renewal. Full disclosure of all pertinent information is equally essential to help the broker plan the best handling of the account."

He pointed out that established risk management techniques could be used to cut manufacturers' products liability to a valuable extent in the field of aviation.

For aviation insurers, manufacturers and brokers had been "caught on the hop" in recent times by a dramatic turnaround in the profitability of such risks. Aviation insurers had looked on them as a very acceptable addition to their income, and were not until recently reserving adequately when losses were reported, in many cases years after the original accident.

Mr. Bolton felt the greatest savings would come to those firms which took the greatest interest in the many factors that led to the settlement of product defect lawsuits.

If a corporation's annual incurred product losses ran at $5 million a year, it was going to be hard pressed to find anyone willing to insure it for less than $6 million a year.

But if it could cut the cost of attrition claims to $3 million, then there should be no problem finding an insurer prepared to give cover for a premium of less than $4 million, he said.

"I'm sure this can be done, but it will not happen by accident," he said. "Anyone who has not started on such a program of understanding the problem will be well advised to do so as soon as possible." ■

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In California

Dry liquor market may start flowing

By MARGARET LeROUX

SAN FRANCISCO—Owners of bars, restaurants and clubs with bar operations in California are facing another kind of drought this year: The market for liquor liability insurance has virtually dried up.

Recent court decisions extending the liability of alcoholic beverage sellers for injuries to third parties have put most underwriters on the wagon. As a result insurance is either nonexistent or premiums for the 24,000 local holders of "on-premises" licenses are prohibitive.

Prohibition, however, may end this fall with the introduction of the California Dram Shop Liability Reciprocal into the market. The reciprocal, the first of its kind for liquor liability in the state, will be managed by William A. Ellis & Co., a San Francisco insurance brokerage firm.

The reciprocal will offer primary liability limits of $300,000 with $200,000 excess liability available. Average premiums for subscribers to the reciprocal will be $2,500, Mr. Ellis plans.

It's the primary liability coverage that's hard to get, he noted. "There are plenty of markets for excess of $500,000 liability."

The reciprocal will also provide coverage for on-premises occurrences, something most underwriters currently exclude. "Scuffles at the bar are where most liquor liability claims originate," Mr. Ellis said.

Fraternal organizations with bar operations have an inherent risk in that members rather than professionals are often the bartenders, Mr. Ellis said.

"It's harder for a fellow member to refuse to serve someone who's had too much to drink," he said.

A key element of the liquor liability reciprocal will be an education program to instruct nonprofessional bartenders how to handle such situations, the broker explained. A requirement of the program will be a monthly meeting between bar owners and their employes to discuss liability situations and how to handle them.

Another key element will be a tight screen on serving minors, Mr. Ellis said. "With ownership of the reciprocal by its subscribers, we'll be able to enforce such relevant underwriting requirements."

It's going to be up to the bar owners themselves to solve the liability problem, the broker noted. "There's no public outcry to protect bar owners . . . the anti-liquor lobby in California is very strong."

Mr. Ellis plans an aggressive claims management system for the reciprocal. "We're going to have an attorney to examine every claim. If we're stuck (with liability) we'll try to settle it as reasonably and as quickly as possible; if it's defensible we'll go as far in the courts as we can."

Applications for licensing the reciprocal and management company are being filed with the California insurance department. "We're keeping the insurance commissioner fully informed of our intentions; we want a good cooperative relationship with the insurance department," Mr. Ellis said.

"If the reciprocal proves to be a success, I hope there will be more competition in the market," the broker continued. "I'd like to see the reciprocal become a stock company and eventually write other forms of liability." ■

More insurance

The number of Americans protected by some form of private health insurance is 15 times the 1949 total, reports the Health Insurance Institute. That year 12 million Americans had some form of private health insurance, says the Institute, while at the beginning of this year there were an estimated 183 million Americans protected.

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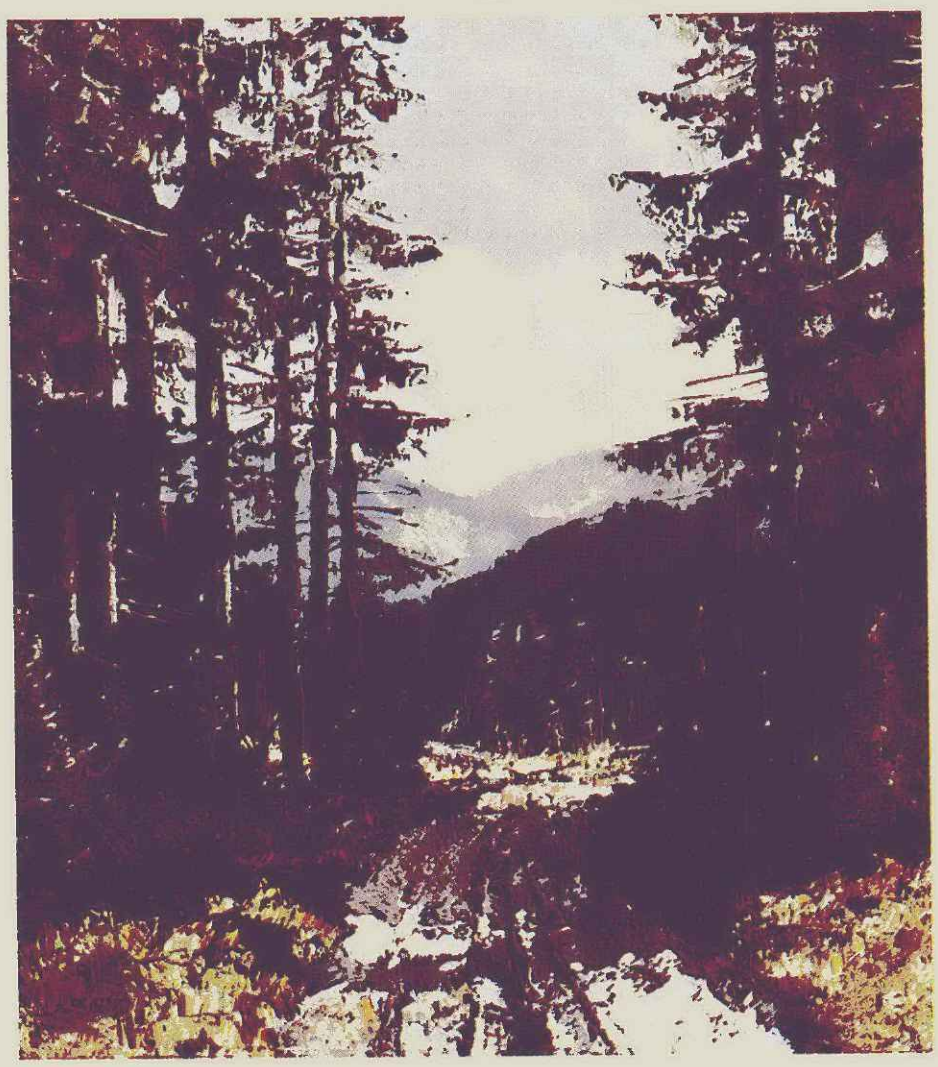

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benefit tax slants

Value of key man life is extolled

By JOSEPH S. ROBINSON
Attorney-at-Law

SUPERSTARS CAN MAKE big money for themselves as well as for the organizations they represent. This is true whether the stars are in entertainment, sports or the business world. So it is obvious that when a company loses its top talent, it can cost money. When the company insures its profit producers, it protects the business —and often makes money on the deal. Reason: the cash proceeds of a key-man life insurance policy is received by the company on most favorable tax terms.

Research studies indicate a steady trend among corporations toward the purchase of permanent life insurance over term plans. A number of factors are involved in that decision.

If the key man leaves the firm before he retires, the cash value in the policy can be put to good use as a fund to help acquire a replacement.

If the key man retires, the company could retain the policy as an investment or surrender it for cash or perhaps sell it to the key man.

Recent surveys make it clear that termination of a large percentage of group term insurance upon employes reaching age 65 show that four out of five executives included in their company's group plan will move into their high mortality age no longer having this protection.

But quite apart from these reasons, an analysis of the cost comparison probably provides the real clue to the selection of permanent over term insurance. While it's true that for the first number of years the cumulative cost is lower for term insurance, the build-up of cash values in the permanent policy later reverses this position.

For example, $100,000 coverage of a 45-year-old male would cost $900 in round figures for a five-year renewable participating term policy. For an ordinary life policy, the initial cost would be $3,-100. At age 65, the cumulative premium paid for the term policy totals $28,285 (using dividends to reduce premiums). For ordinary life, the cumulative premium comes to $49,045 (using dividends to purchase additional term in the amount of the cash value). But the ordinary life policy would show a cash value of $46,-877 at that time, so that the net insurance cost would be reduced to $2,168 over the 20-year period.

Keep in mind that these figures represent the "living costs" of the insurance—the cost to maintain the policy while the insured is alive. In other words, this aspect of a key-man policy represents the cost to the company should the executive terminate employment before or at retirement.

It is only in the area of death benefits prior to retirement when the term policy will stand up well. If it were certain that the executive would remain with the company and die before age 65, the term policy would be the better buy. But that is not likely to occur. Recent figures taken from insurance company tables indicate that the probability of a 45-year-old male surviving past age 65 is very good—80% in fact. Indeed, 70% will be around at age 70.

Therefore, since there is every likelihood that the insured executive will outlast the term (age 65), the $100,000 term policy will go down the drain having no salvage value whatsoever. On the other hand,assuming the company selected the ordinary life policy, and death occured at age 66, the firm could then pick up roughly $149,000 in death benefits tax free. If the insured lived to age 70, the company would be entitled to $153,000 on the same tax-free basis. In the event that the company chose to suspend further premium payments upon the retirement of the insured at age 65, it could stand pat with $63,000 in paid up insurance.

Here's the bottom line: While key-man insurance may be acquired under lower premium term rate, initially, the "numbers" still favor permanent insurance over the long pull. Reason: The odds support a better chance for picking up a tax-free windfall whenever the insured dies—sooner or later. ■

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Trade group slates caucus on risk control

DES PLAINES, Ill.—Problems facing the adhesive and sealant industry in product liability protection and risk management will be covered at the Adhesive and Sealant Council's annual fall seminar at the Crown Center Hotel in Kansas City, Mo., on October 10-12.

Leading authorities from the legal, insurance and industrial communities will attend the seminar to discuss loss prevention engineering; loss control; the role of management in product liability; toxicology, warranty and record-keeping; effective product liability defense; the viewpoint of the plaintiff; claim handling, funding and coverage problems in insurance.

For further information and advance registration, write Doris J. Kann, assistant executive secretary, the Adhesive and Sealant Council Inc., 2350 E. Devon Ave., Des Plaines, Ill. 60018. ■

Insurer offers plan for small groups

SAN RAFAEL, Calif.—Fireman's Fund American Life Insurance Co. has unveiled a dental insurance program for any group with more than 13 employes.

Several scheduled plans are available, each listing maximum charges for more than 100 dental procedures. Any group over 25 employes may opt for orthodontic benefits for dependents.

The program, which is being filed nationwide, has been approved by 35 states. ■

Two incidents, movie spark new questions on stadium security

By FRANK MARKOWITZ

NEW YORK—Life may imitate art, but stadium managers who have seen the movie "Black Sunday" certainly hope it doesn't.

The film's version of a hijacked blimp bombing a Super Bowl game scared national audiences. It may also have suggested new worries to stadium managers already harried by such ordinary risks as drunken gatecrashers.

Two other incidents—a plane crash into a Baltimore stadium filled only minutes before and a human fly's assault on the New York's World Trade Center—must also make security chiefs wonder how far their responsibilities extend.

Are stadium and building managers now accountable for "security in the sky," as a New York Times columnist suggested? Must they anticipate bizzare stunts at their facilities? And if injuries or damage occur, could they be found liable?

Most security officials *Business Insurance* talked to said there are practical limits to security programs and that they would not be required to take extraordinary measures against rare stunts to avoid liability.

Nevertheless, some have taken specific measures in the wake of these two real-life incidents. The security officials also found the liability question intriguing.

One risk manager even made a note to himself to talk to stadium insurers and to his boss, the finance director of Miami, to try to get an answer to the liability questions.

The crash occurred last December when pilot of a single engine Piper Cherokee attempted to land his light plane in the Baltimore Memorial Stadium only 15 minutes after the end of a playoff football game.

Luckily, the Pittsburgh Steelers easy defeat of the hometown Colts had emptied the statium early. The only damage was 50 seats destroyed and a pair of policemen slightly hurt.

The crash achieved national notoriety. In Baltimore it resulted in "a helluva lot of commotion around the city," according to Ben Roth, assistant manager of the Baltimore stadium.

The uproar produced strict enforcement of a city ordinance prohibiting flight over the stadium lower than 3,000 feet. Police now monitor the stadium for violators using binoculars.

"Also we do have police helicopters which fly around the outside of the stadium, the rim, and they also observe this kind of enforcement," Mr. Roth said.

According to the district chief of the Federal Aviation Administration, the local ordinance had been on the books since May 1974, but just hadn't been enforced. Kenneth Kress added that despite the previous ordinance and FAA laws, legislators fell over themselves in a rush to put more restrictive laws on the record.

With some amusement, Mr. Kress recalled that many of the proposals would have actually been overruled by the FAA, since they contradicted federal codes.

In Los Angeles, Coliseum operators are currently urging the City Council to pass an ordinance ban-

Continued on page 60

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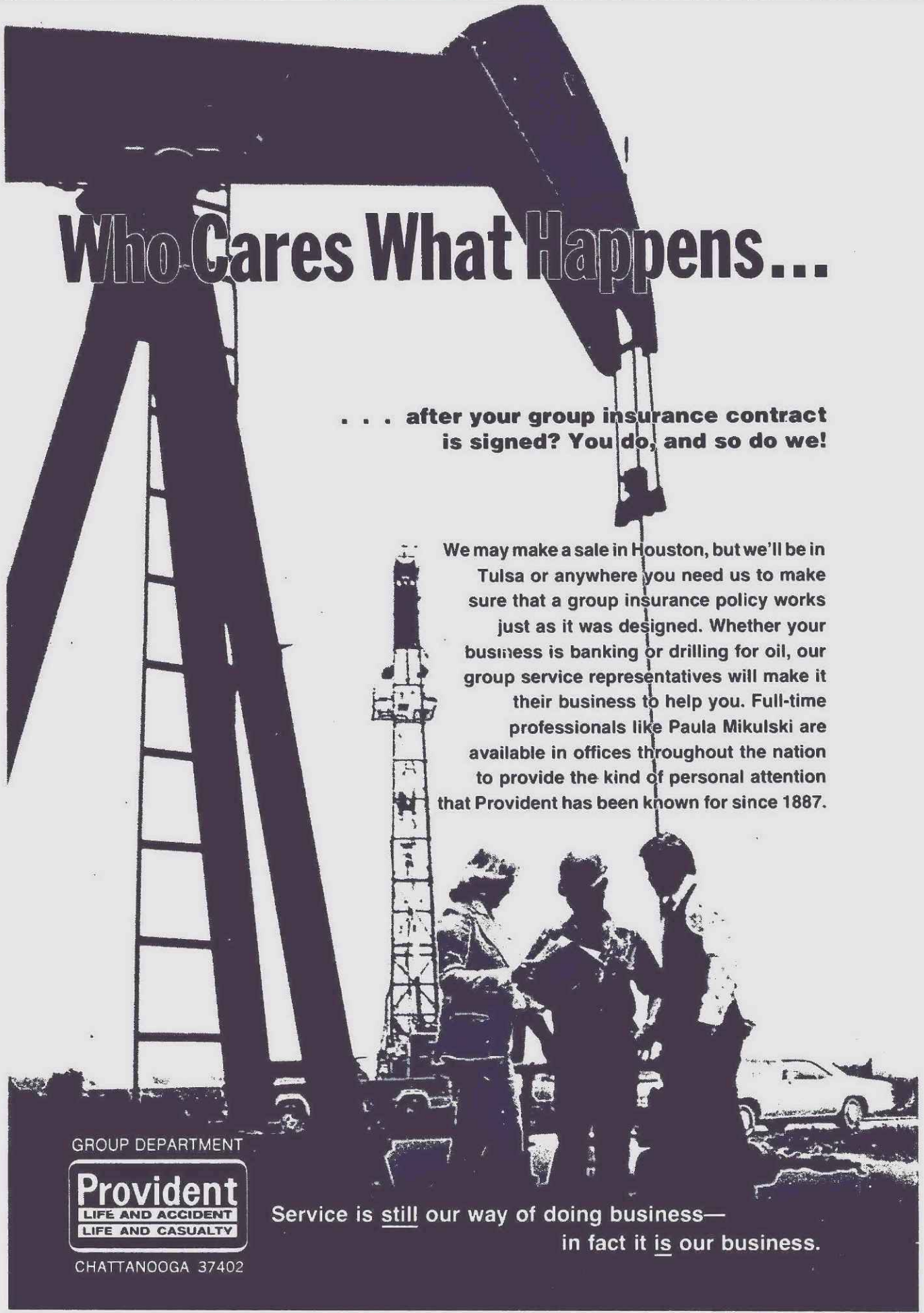


Stadium security . . .

Continued from page 59

Baltimore is currently trying to collect the $9,000 in damages from the crash. (The 50 seats account for only a third of that, with the remainder for police and fire services.) It sent bills to Donald Kroner, the pilot, and the Aldino-Churchville Industrial Airpark, which rented the plane.

If the city cannot collect, it will file suit against the pilot or the airpark, according to Louis Diven, associate city solicitor. The airpark claims it is not responsible for damage done by rental pilots, but Mr. Diven and others say a rental concern must require either an insurance certificate or a waiver from the pilot.

The city is trying hard to collect because it is self-insured against property damage up to $300,000. Each department's budget is assessed the first $1,000 in damages.

Luckily no spectators were hurt in that crash. But what if some had been injured and sued? Would stadium operators have been liable?

"If we were derelict in restricting Pipers from buzzing the stadium, yes. But otherwise, no," said Mr. Hardy of the Los Angeles Coliseum.

"I think that would be a legal question, and it's an interesting question. I'd assume that the carrier on an owners, landlords and tenants policy would at least defend the city against all suits. Certainly we'd force them to defend the city," said Don Stewart, property and insurance manager for the city of Miami.

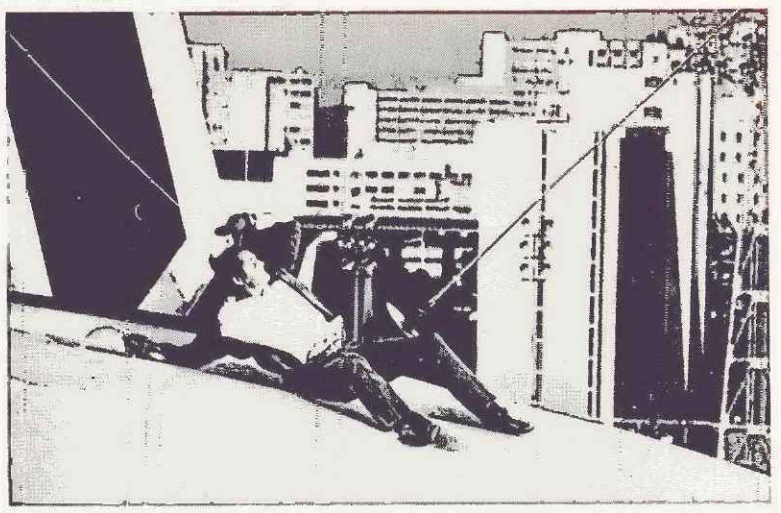
After mulling it over a few moments, Mr. Stewart decided that the team playing in the stadium would probably be responsible "since it was the game which attracted the pilot."

In "hundreds of incidents" before, the Miami Dolphins have been covered by insurers for damages occuring at their games, Mr. Stewart said, adding that he would have to check on the question.

At least in the past, sports tickets often carried a waiver of liability for spectator injuries. All stadium and legal officials interviewed agree that not only does such a waiver not cover a plane crash, it doesn't cover anything.

"You can't contract away your liability. We don't do it. Some facilities do put waivers on tickets to discourage suits, but we think people are a little more sophisticated than that," said Richard Roach, assistant director of Miami's Public Facilities Department.

George Willig's climb up a World Trade Center tower, which took the Queens toy designer and mountaineer over three hours, was an example of a stunt so extraordinary that it isn't likely to be repeated.



Scene from the movie "Black Sunday." Could such a disaster actually take place?

Nevertheless, the chief of security for the Trade Center, the world's second largest building, Capt. John J. Collins, reported that "we have taken mechanical steps to make it more difficult to commit a stunt like that again. Plus we redirected our areas and frequency of patrol."

A rash of skyscraper ascents isn't likely said Lieutenant John Elliot of the security department of the Port Authority of New York and New Jersey, which operates the building. Mr. Willig hooked himself onto special tracks, unique to the World Trade Center, which are used for window-washing equipment.

Mr. Willig attracted a large throng to watch his early morning climb in late May. Since the tracks and aluminum panels on the tower had of course never been tested for this type of climb (except by Mr. Willig) there was a possibility of climber and building material crashing down on the crowd.

So Port Authority police quickly closed off the five-acre plaza below to prevent crowd problems.

The biggest problem, said Capt. Collins, was posed by the press photographers, who vied with each other in bringing their helicopters closest to the climber.

Security for the twin towered 110-story Trade Center is provided by 50 Port Authority police officers and 200 private guards in shifts. The building is much easier to guard now than in the early stages of construction, said Capt. Collins. At that time, three years ago, a French tightrope walker named Phillipe Petit inched across a high wire slung between the two towers.

"Basically, the security at that time was to prevent people from removing things from the building. So he was able to bring in the equipment he needed with the construction workers' help," Capt. Collins said of the tightrope walker.

No changes in the security program for the Trade Center were initiated by the Port Authority risk management division after George Willig's ascent, according to manager Joseph DeMarinis. "And I don't think there should be any. Those are fly-by-night affairs, and we don't concentrate on them deeply."

If Mr. Willig had damaged the structure, he would have been sued by the claims department for vandalism. The Port Authority is self-insured up to $100,000 for property damage, according to Mr. DeMarinis.

Most facility managers agreed that large structures have larger-than-life security problems, impossible to cover from either a safety or insurance standpoint. As Mr. Stewart of Maimi put it, "When you start listing all these exposures, it's mindboggling." ■

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around the states

Blues refuse request to deliver documents

WILMINGTON — Blue Cross and Blue Shield of Delaware have refused to turn over to the state insurance commissioner documents the commisioner says he needs to evaluate the plan's operation.

David H. Elliott requested copies of the Blues' medicare document, cost reports, audited financial statement, all contracts for outside services, all contracts with physicians, cost reimbursement reports and detailed budget statements. Some of the documents are public records.

Texas MAP

AUSTIN—The new Texas market assistance program will begin work on placing a dozen risks when its operation is formally approved by the state board of insurance. Bill Huff, senior vp and general counsel of Employer's Casualty, is chairman of the Texas program.

Safety decision

COLUMBUS—A court of appeals has upheld a ruling by the Ohio industrial commission that a Columbus excavating firm violated safety rules, resulting in the death of a worker in 1973. The court backed the commission determination that Capital City Excavating Co. Inc. violated a safety rule when a crane operator was electrocuted at a sewer excavation site. The commission awarded $12,000 to the victim's widow on grounds the firm violated a rule providing that a crane cannot be operated within 12 feet of high tension wires.

Police benefits

HARRISBURG—State Attorney General Robert Kane of Pennsylvania has ruled that certain "non-service connected" death and disability benefits for state police are not legal even though authorized by the legislature. Kane's opinion said the awards conflicted with provisions of the state employes retirement code that "pension rights to state employes shall be determined solely by the code." The ruling came in the case of the widow of a trooper who died of leukemia.

Malpractice law

AUGUSTA — Gov. James B. Longley of Maine has signed into law legislation designed to help guarantee the continued availability of medical malpractice insurance. The new law allows patients to agree that they will bring any malpractice complaints to arbitration rather than a court. The patient would be given the option before being treated by a physician or hospital.

Time limits

FRANKFORT — The Kentucky court of appeals has ruled that it is too late for a woman to file a malpractice suit that grew out of her blindness after birth 23 years ago. The woman contended that the cause of her blindness was too much oxygen in an incubator. She said she learned this at age 15, but not until two years ago did her father inform her that negligence may have caused it. But the three-judge court agreed unanimously that the action was barred by the statute of limitations.

Health pool

MADISON—The Wisconsin assembly's health and social services committee has endorsed a bill that would create a high risk health insurance pool to provide coverage to persons who are considered high medical risks. Under the proposal, all health insurers in the state would be required to set up a pool to provide coverage to persons who cannot obtain it through normal channels and are ineligible for Medicaid.

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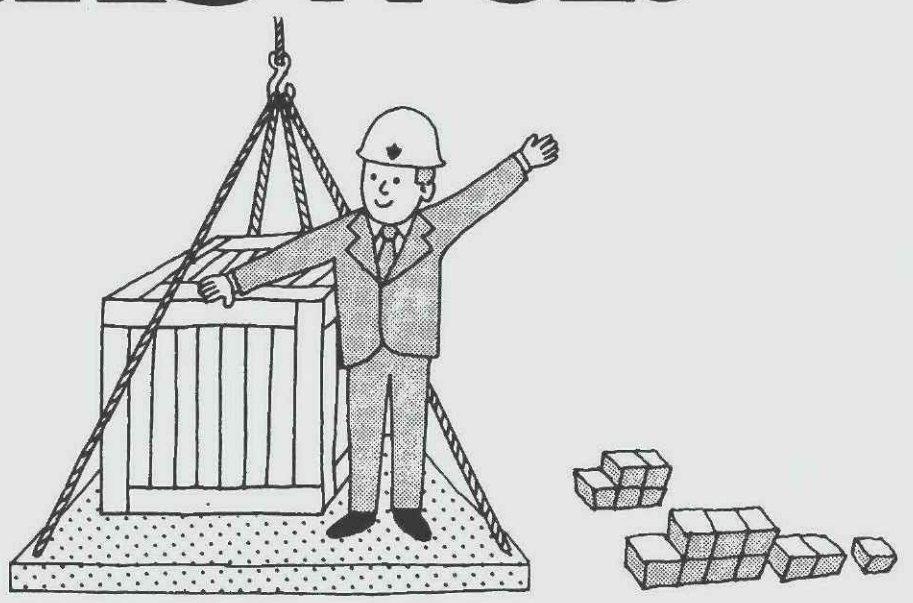

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legal brief

Work comp award approved in assault case

DOES A WORK-RELATED assault by an employe upon his supervisor constitute the "unusual exertion" required to award workers' compensation for a proximately resulting myocardial infarction? The Delaware supreme court ruled that it does.

James Willis, who had a pre-existing heart condition, suffered a myocardial infarction after he was accosted in his office by an employe, Raymond Elliott. Mr. Elliott, who had been drinking, used loud, abusive profane language and creating, according to the court, an atmosphere of imminent physical violence. The Industrial Accident Board denied Willis compensation and the trial court affirmed the accident review board's decision.

On appeal the supreme court pointed out that unusual exertion is a prerequisite to compensation in a heart or back case where a pre-existing condition is known. According to the court, "The hazard occasioning a compensable occupational claim must not exist either in employment or everyday life."

Applying these tests, the court concluded that there was unusual exertion and that the myocardial infarction was compensable. *Willis* v. *New Castle County*, Supreme Court of Delaware, Nov. 22, 1976, *per curiam*, 371 A.2d 1072 (BI/01/Au.-$3)

Posthumous Child

Is an illegitimate posthumously born child a dependent under the Wisconsin Workmen's Compensation Act (Act) and therefore entitled to payment of a death benefit under the act? No, according to a decision of the Wisconsin supreme court. But the court reaffirmed that an illegitimate child could be a dependent qualifying for death benefits.

This claim for death benefits was filed on behalf of David Harley Larson, the alleged illegitimate child of David Nelson. Mr. Nelson, who was 25 years old and unmarried, was injured in a work related accident and died four days later. It was alleged that Larson was the illegitimate child of Mr. Nelson and was about three months in the womb when Mr. Nelson was injured and died. The Department of Industry, Labor and Human Relations denied death benefits to Larson but this decision was reversed by the trial court. Travelers Insurance Co., the employer's workers' compensation insurance liability carrier, appealed the court's judgment.

The supreme court noted that two critical features of the act controlled. First, no payments of death benefits are made except to persons who qualify as either wholly dependent or partially dependent upon the deceased employe for support. Second, the status and degree of dependency are determined as of the date of the injury to the deceased.

The court did not believe that even a liberal construction of the statute could permit a conclusion that a fetus is considered a lineal descendant or a member of Mr. Nelson's family under the terms of the act. "The respondent (Larson)," the court stated, "was not alive on the date of the injury. His future existence was contingent upon his being born alive. Until that occurrence there was no obligation because there was no being to be supported."

The court recognized that the act specifically included posthumously born children in the provision for *additional* death benefits. But the court emphasized that it was for the legislature alone to broaden the "pathway." *Larson* v. *Wis. Dept. of Industry, Etc.* Supreme Court of Wisconsin, March 29, 1977, Hensen, J., 252 N.W.2d 33 (BI/02/Au.-$3)

Collapse of Roof

This suit was brought by the lessor of a shopping center and its insurer against the insurance carrier of one of the lessor's tenants under a "blanket public liability" policy issued to the tenant. The U.S. Court of Appeals for the Fifth Circuit ruled that where the lessee's policy covered liability for damages resulting from accidental injury to or destruction of property arising out of the business of the insured lessee, the collapse of the shopping center roof was not a peril insured against.

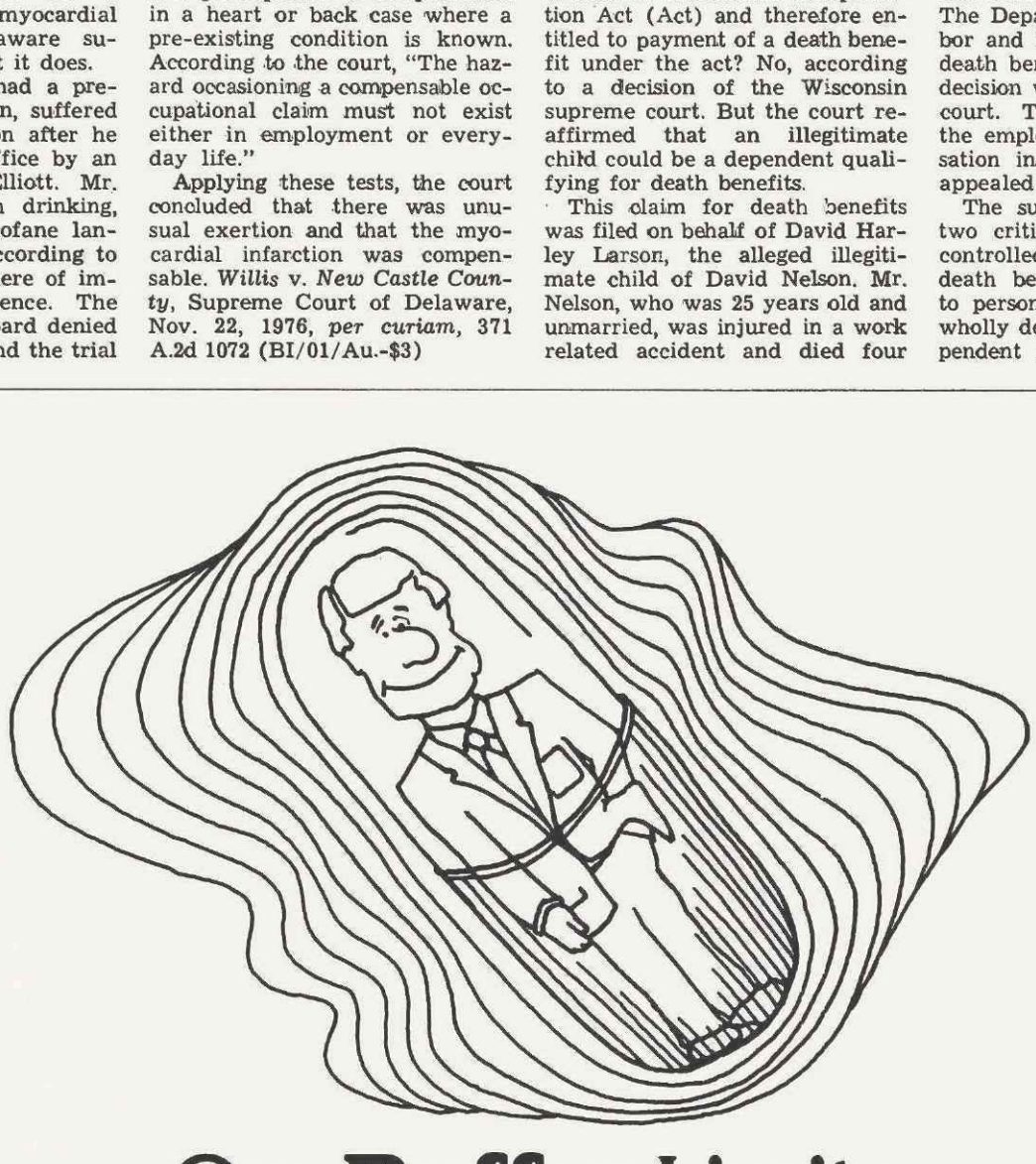
The abstracts published in this column were prepared by Cases Unlimited Inc., Evanston, Ill.

Here National Hills Shopping Center Inc. (National Hills) operated the shopping center in which National Hills White Store Inc. (White Store) operated a department store. National Hills was insured by the Insurance Co. of North America (INA). The White Store was insured under a "blanket public liability" policy issued by Liberty Mutual Insurance Co. (Liberty).

The Liberty policy insured White Store for sums it was obligated to pay by reason of liability for damages "arising out of the business of the named insured." Under the policy the "insured" was defined to include "the owner or lessor . . . of premises rented to or leased to or occupied by the named insured . . ." as well as the named insured.

In 1968 a roof of the shopping center collapsed above White Store's premises resulting in damages to the store and merchandise. Following suit, National Hills and INA satisfied White Store's claim for damages. Subsequently, National Hills and INA sought to recover the amount paid to White Store from Liberty on the theory that National Hills was entitled to the protection and indemnity from Liberty as an "additional insured." The trial court ruled in favor of Liberty.

The court of appeals emphasized that an insurance policy which, when construed reasonably and in its entirety, unambiguously and lawfully limits the insurer's liability, cannot be expanded beyond what is fairly within its plain terms. Here, the court noted, the collapse of the roof arose out of the business of National Hills in operating a shopping center



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and not out of the business of White Hills, the named insured.

According to the court, this was not a peril insured under the Liberty policy. *Nat. Hills Shopping Ctr., Inc.* v. *Liberty Mut. Ins. Co.*, United States Court of Appeals for the Fifth Circuit, May 2, 1977, Hill, J. (BI/03/Au.-$3)

Hotel Robbery

This suit was brought by the Statler Hilton Hotel Corp. and the Zurich Insurance Co. to recover for damage incurred when a Wells Fargo Armed Service Corp. agent was robbed of a locked suitcase containing cash belonging to the hotel. The contract between the hotel and Wells Fargo required money shipments to a designated consignee and insurance covering any shipment within the scope of the contract.

The D.C. Court of Appeals ruled that transportation within a hotel was not within the scope of the contract. Consequently, Wells Fargo was not obligated to insure its guard's taking money from the hotel cashier on one hotel floor escorting the cashier to the basement and returning the money to the cashier. *Statler Hilton Hotel Corp.* v. *Wells Fargo, Etc.*, District of Columbia Court of Appeals, March 15, 1977, Reilly, C.J. (BI/04/Au.-$3)

Duty to defend

Here suit was brought against a manufacturer of hormone suspensions after the buyer's vials of the suspension were recalled by the FDA as not sterile. The insured manufacturer sought a declaration that its insurer, Safeco Insurance Co. of America, was obligated to defend the action. A New York appellate court ruled that an exclusionary clause covering when the insured's product was withdrawn from the market did not relieve the insurer of its duty to defend.

The court also concluded that an exclusionary clause applicable to damages resulting from a failure of a product to function or perform as intended by the insured would not apply where the product had become part of, or had been integrated into, another product of a third party.

Since the duty to defend was broader than the duty to indemnify and the insurer failed to establish that the loss was completely within the exclusionary clauses, the court concluded that the insurer was not excused from defending the action brought against its insured. *Intern. Hormones* v. *Safeco Ins. Co. of America*, N.Y. Supreme Court, Appellate Division, Second Dept. May 9, 1977, Memorandum by Court, 394 N.Y.S. 2d 260 (BI/04/S.—$3)

Elective abortions

The U.S. Court of Appeals for the Eighth Circuit has ruled that the curators of the University of Missouri could constitutionally exclude from coverage under its medical insurance plan payments for an elective abortion when the plan provided benefits for pregnancy resulting in childbirth.

Barbara Lehocky, a full-time female employe of the University of Missouri, was covered by a group medical insurance plan which included a clause making her eligible for a $175 primary pregnancy benefit. Lehocky became pregnant and elected to terminate her pregnancy by abortion, and her claim for $175 was refused since the plan excluded abortion.

Relying principally on decisions sions handed down by the United States Supreme Court in *Doe* v. *Poelker*, 45 U.S.L.W. 4794 (June 20, 1977) and *Maher* v. *Roe*, 45 U.S.L.W. 4787 (June 20, 1977), the court stated that if the Equal Protection Clause was not violated in *Maher* and *Poelker*, where the state of Connecticut and the city of St. Louis refused to pay for elective abortions even though they did pay for pregnancy carried to term, the failure of Missouri here to provide a medical plan including abortions was not constitutionally impermissible. *Lehocky* v. *The Curators of the University of Missouri*, U.S. Court of Appeals for the Eighth Circuit, April 14, 1977, *per curiam* (BI/05/S.—$3)

(Copies of the entire decision of cases described may be obtained by sending a check for $3 made out to Cases Unlimited to Legal Briefs, Business Insurance, 740 N. Rush St., Chicago, Ill. 60611. Please list the number for each opinion requested, which is at the end of the brief.)

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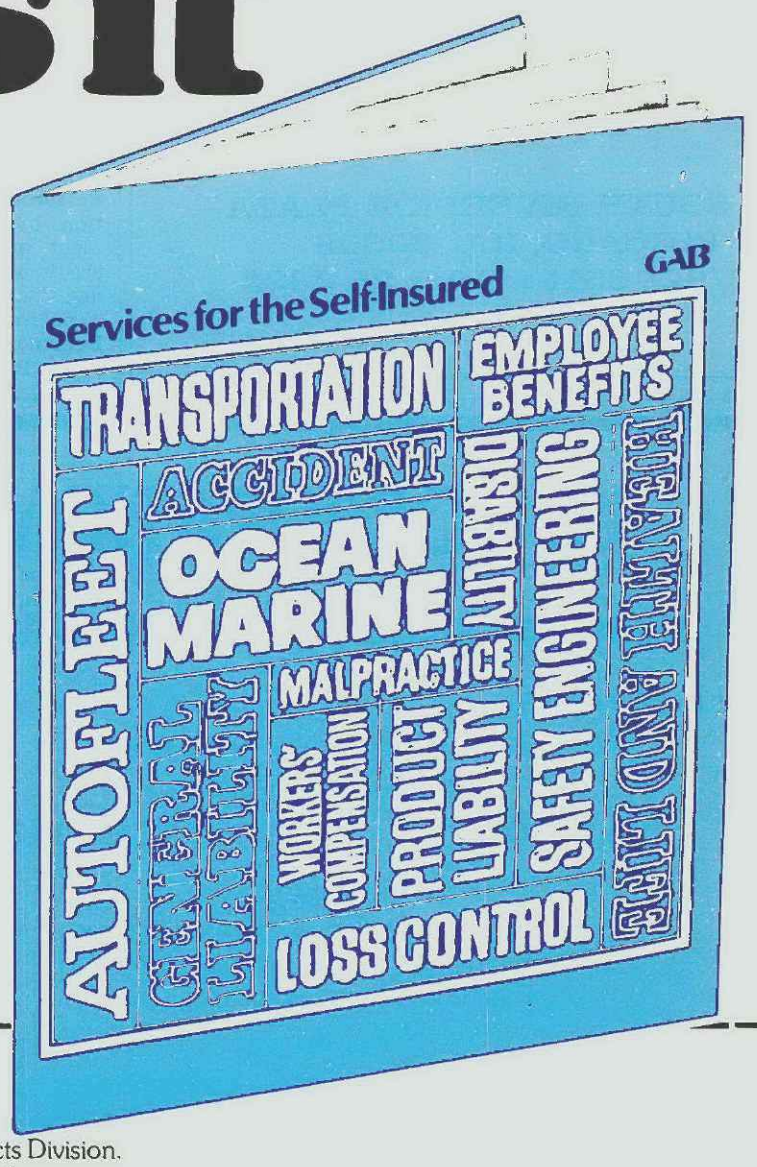

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info for buyers

To receive materials listed in Info for Buyers, write to the name and address accompanying each item, mentioning that you saw it offered in *Business Insurance*. Readers are invited to submit educational and promotional material for possible inclusion in the column. All items that are free and of interest to our readers are eligible; those available at a modest cost will be considered. Send a sample to Info for Buyers, *Business Insurance*, 740 Rush St., Chicago, Ill. 60611.

• Underwriters Laboratories Inc. published a supplemental listing of **molded-case circuit breakers and circuit breakers for marine use.** It has received the concurrence of the U.S. Coast Guard. Covered are all types of circuit breakers treated under UL Standard 489. Copies are available for $4.50 each. The complete standard and any subsequent revision is available for $11 per copy. A catalog of all UL standards is free. Write Underwriters Laboratories Inc., Publications Stock Dept., 333 Pfingsten Road, Northbrook, Ill. 60062.

• Attention bankers and insurers. **Insurance Buyer's Checklist for Banks** offers guidelines for the best insurance program for banks. The booklet is designed to facilitate continuation of present coverages. For a free copy write Robert N. Hughes, RIMCO Inc., Suite 180, 10300 North Central Expressway Dallas, Tex. 75231.

• Developing effective business crime prevention programs is the subject of a report published by the U.S. Department of Commerce. The 250-page report, **Crimes Against Business: A Management Perspective,** reports the evaluations of businessmen and government officials on embezzlement, credit losses, personnel selection and computer abuses. Copies are $3.60 from the Superintendent of Documents United States Government Printing Office, Washington, D.C., 20402.

• **The Top Security Policy** outlines the multi-peril policy offered by Zurich-American with the subtitle "Introducing the Unpackaged Package." The policy allows agents and brokers to meet the individual insurance needs of many businesses. For a free copy write M. Montgomery, Zurich-American Insurance Cos., Communications Dept., 111 W. Jackson Blvd., Chicago, Ill. 60604

• Operation EDITH, a pamphlet from the American Mutual Insurance Alliance, explains the basic steps to **home fire safety.** EDITH stands for Exit Drills in the Home and the pamphlet tells families how to effectively use early warning systems and to plan escapes. Available in lots of 100 for $1.50. One free copy is available upon request with a stamped, self-addressed envelope. Write Gary Jensen, Accident and Fire Prevention Dept., American Mutual Insurance Alliance, 20 N. Wacker Drive, Chicago, Ill. 60606.

• Honeywell's **Fire & Security Planning Guide** describes alarm circuits and systems for fire, security or integrated protection for commercial, industrial and institutional buildings. Application of basic or centralized system with additional capabilities, such as access control, remote building monitoring, high-rise building fire management, are explained. For a free copy write Honeywell, MN12-2118, Honeywell Plaza, Minneapolis, Minn. 55408.

• **Protect Your Home . . . For All It's Worth** will help a homeowner estimate replacement costs in the event of a loss. The booklet provides a worksheet and floor plan to help a policyholder determine if his house is insured to replacement value. For a free copy write Communications & Public Affairs, Kemper Insurance Co., Long Grove, Ill. 60049.

• **Are You Receiving All Benefits Available Under the Law?** That's the question asked by a Kemper Insurance Cos. brochure which describes how small firms can pool their results and achieve lower net costs through lower than average losses on their workers' compensation costs. For a free copy write Communications & Public Affairs, Kemper Insurance Cos., Long Grove, Ill. 60049.

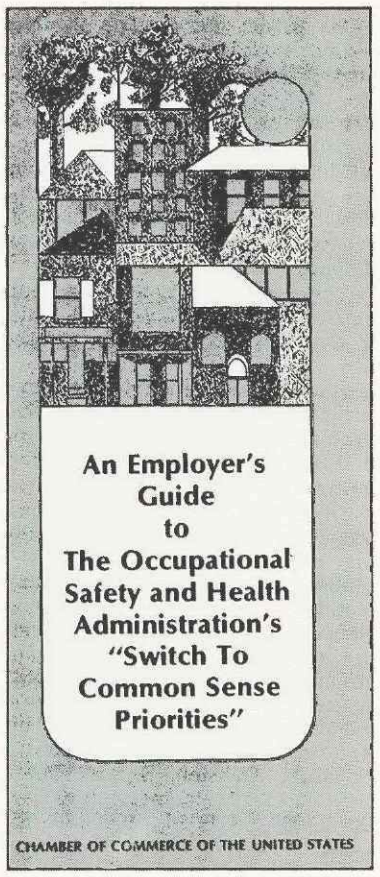
• A product information bulletin from 3M Co., titled **Light Water,** describes a new extinguishing agent for alcohol and polar type solvents called light water brand alcohol type concentrate. Illustrations show how ATC works on alcohol and on ordinary hydrocarbons. Guidelines and recommendations for Class B fires are included. For a free copy write Dave A. Glass Bldg. 223-6SE, 3M Center, St. Paul, Minn. 55101.

• **Kidde Carbon Dioxide Extinguishers** are the subject of a two-page promotional brochure on effective protection from Class B (flammable liquids) and Class C (live electrical) fires. For a free copy write Adventising Manager, Walter Kidde & Co., 675 Main St., Belleville, N. Y. 07109.

• **Product Technology Newsletter —Flame Resistant Plastics,** published by Arthur D. Little Inc., gives a background of recent developments in flame resistant plastics, including how flame retardants can affect plastic products and processing. For a free copy, write Irving J. Arons, product technology section, Arthur D. Little Inc., Acorn Park, Cambridge, Mass. 02140.

• **Business Legal Expense Insurance** is the subject of a packet from NAS Insurance Services Ltd. The brochure describes the policy that provides reimbursement for business legal expenses that are normally tax deductible. For a free copy write S. Aronson, NAS Insurance Services Inc., P.O. Box 54831, Los Angeles, Calif. 90054.

• Will OSHA deemphasize minor infractions and concentrate compliance with major regulations? Can OSHA conquer its bureaucratic history and adhere to the Carter Administration's promise of "common sense" enforcement of the Occupational Safety and Health Act? The U.S. Chamber of Commerce has analyzed these questions in an 18-page booklet—**Switch to Common Sense Priorities.** One to nine copies cost $1.25 each; 10-99 copies, $1 each, and over 100 copies, $.75 each. Write the Chamber of Commerce, 1615 H St. N.W., Washington, D.C. 20062.



• Are you a well service contractor? If you are, you may be interested in **Insurance Buyer's Checklist for Well Servicing Contractors.** The 16-page booklet provides a working form to determine an appropriate schedule of coverages and offers guidelines for coverage. The booklet is free to buyers of insurance but costs $5 for non-buyers. Write Inc., 10300 North Central Expressway, Suite 180, Dallas, Tex. 75231.

• Examining an **Employer's Financial Capacity to Self-Insure** under workmen's compensation statutes is a 150-page booklet developed under the auspices of the Center for Insurance Research. Larry D. Grant and Maurice E. McDonald present a system for such an examination that includes a methodology for measuring

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potential financial obligations on future claims and outstanding obligations on claims that have already occurred. Price is $7. Write: Publishing Services Division, School of Business Administration, Georgia State University, University Plaza, Atlanta, Ga. 30303.

• The Research Institute of America has published a 34-page booklet, **The Executive as Target for Personal Lawsuit:** Staff Recommendations, to "help corporate officers tread their way through the mine field of personal liability." The RIA report provides illustrations, makes observations and offers recommendations on the fiduciary role and its implications, directors' and officers' liability to third parties, personal liability and the regulatory agencies and D&O idemnification and insurance. Copies of the booklet are available to members for $10 each and non-members for $25. Send order with check attached to The Research Institute of America Inc., Dept. 111, Mt. Kisco, N.Y. 10549.

• **Business Flying:** Some Professional Considerations, a 16-page booklet prepared by the Insurance Co. of North America, discusses company exposures and needed insurance when employes travel in non-commercial aircraft. For a free copy write: INA, Dept. R., 1600 Arch St., Philadelphia, Pa. 19101.

• A **Kidnap and Ransom Insurance Kit** from Stewart Smith contains a cover letter, corporate and individual application, policy, schedule of assureds, individual kidnap and ransom wording, optional coverages, ransom and kidnap extension and a suggested kidnap detention procedure. For a free copy write Cay Mann, Stewart Smith, 125 S. Wacker Drive, Chicago, Ill. 60606.

• The **AFIA Worldwide Insurance Guide** lists insurance practices in 70 countries, including the countries of the Eastern Bloc. This reference book contains information on compulsory covers, admitted and non-admitted insurance and types of covers available. Available free to readers of *Business Insurance*, write Joseph B. Weimert, AFIA, 1700 Valley Rd., Wayne, N.J. 07470.

• **Difference in Conditions Insurance** is discussed in a Kemper Insurance Cos. brochure which explains how this extended property coverage can protect a firm from extensive losses due to water damage, burglary, theft and other accidental catastrophes. For a free copy write Communications & Public Affairs, Kemper Insurance Cos., Long Grove, Ill. 60049.

• The General Adjustment Bureau describes its **Structured Approach to Safety of Loss Control** in a free booklet. Procedures and development of safety plans are outlined, including a safety and loss control checklist. Write GAB Business Services Inc., 123 William St., New York, N. Y. 10038, Attn: J. W. Weatherstone.

• An 8-page brochure by the Walter Kidde Co. explains the **Kidde Hanlon 1301 Engineered Fire Protection Systems.** For a free copy write Advertising Manager, Walter Kidde & Co., 675 Main St., Belleville, N. Y. 07109.

• **Fire Protection Systems and Equipment** is an eight-page color brochure describing the various fire protection systems offered by Walter Kidde & Co. Included are the company's Sentinel pre-engineered and dry chemical and Hanlon 1301 systems; carbon dioxide, dry chemical and Hi-Ex foam. For a free copy write Advertising Manager, Walter Kidde & Co., 675 Main St., Belleville, N. Y. 07109.

• **The Mercer Bulletin,** published monthly, covers subjects for employe benefit and pension program managers. The prudent man rule, lump sum settlements, IRAs, and pensions are among the articles in the bulletin. For a free copy write Editor, The Mercer Bulletin, William M. Mercer Inc., 1221 Ave. of the Americas, New York, N. Y. 10020.

• GAB's family of **Value Appraisal Services** includes Value Rater, cost E Mater and comprehensive value appraisals. For an explanation of each of these services in a free brochure, write GAB Business Services Inc., 123 William St., New York, N.Y. 10038.

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Guided by a leading communications expert, Herbert Zeltner of New York-based Herbert Zeltner Marketing & Communications Inc., managers will assess the audio-visual communications programs of more than a dozen companies. They will gather behind-the-scenes information about the programs and increase their take-home expertise along the way.

These three special screenings comprise just one of the highlights of the conference, scheduled to be held at the Continental Plaza Hotel.

Other leading corporate benefit programs will be discussed in detail during the two-day symposium by the managers responsible for putting them together. Speakers who have won awards for their outstanding benefit communications programs include Susan E. Forster of Mead Corp., Dennis A. Kairis of Borden Inc., Judith Starkey of Chemetron Corp. and Lee A. Carlson of Bendix Corp.

Choosing a consultant can be a most traumatic experience, superceded only by the task of defining exactly what it is you want the consultant to do for you, and at what cost. John M. Shores of the Birmingham News Co. and Robert Sjogren of Xerox Corp. will share their experiences, good and bad. They will provide valuable hints on how to bypass some of the trying parts of the trial-and-error method of learning to work with consultants.

Nobody embarks on a benefit communications project without first completing the rigors of budgeting for the job, a subject to be tackled by George Craig of Green Giant Co. who has some rules-of-thumb for figuring what to spend, what media to use and how to allocate the dollars among them.

Federal regulations are the bane of benefit managers still wallowing in the aftermath of ERISA. In fact, the federal pension law requires employers to do a better job of telling their workers about the benefits being promised.

What employers don't know is how the regulators in Washington view communications programs, what they consider a good description of benefits and what they would say is bad. Ron Weakley of the Department of Labor's pension and welfare benefit section will address the issue of what the government expects of employers. He'll interpret the final rules about the information companies and organizations have to provide to their workers.

Several leading benefit consultants will add to the discussion of complying with federal regulations by presenting the alternative ways an employer can satisfy the law, not spend a fortune and still be effective. Barbara Philbeck and Richard Cromer of Hewitt Associates will show how companies are meeting and exceeding ERISA's requirements, offering insights on ways to meet your communications obligations.

On the other side of the communications coin, those attending the conference will hear firsthand what employes think of the literature they're provided with. William W. Winpisinger of the International Assn. of Machinists and James Mayes of Standard Oil of Indiana pull no punches in telling what employes really say about benefit information devices.

A look at the actual production problems along the road to good benefit communications comes from a panel of experts specializing in solving communications problems. Moderated by Don Ward, director of employe benefits at Medtronic Inc., the panel includes John Mackenzie, a New York film producer; John Kearney of Kwasha Lipton, and Paul Sanchez of Towers, Perrin, Forster & Crosby.

Early registrants who sign up before Oct. 26 to attend the conference can qualify for a reduced rate of $285 for the two-day event, which includes meals. Additional registrants from the same company also signing up early qualify for a 10% discount rate of $256.50.

The registration fee after Oct. 26 is $320 per person, with additional registrants from the same company qualifying for the 10% discounted rate of $288 per person.

For registration and hotel information, contact Mary Ann Engelhardt, Crain Education Division, 740 N. Rush St., Chicago, Ill. 60611, or call 312-649-5241. ■

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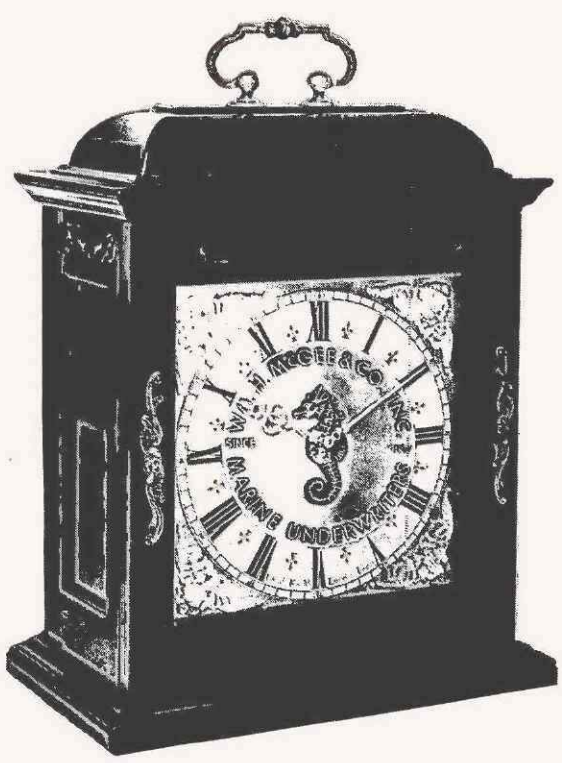

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New information center planned

GERMANTOWN, Md. — The Aspen Systems Corp. has established a Center for Compliance Information here to collect information on government regulations concerning safety and health, employment, pollution and energy use.

Aspen said it asked plant managers personnel directors and safety engineers to determine what services were needed. The center's occupational safety and health compliance service will provide a comprehensive manual covering OSHA compliance which will be updated quarterly.

Aspen is a leading publisher in the field of health law and regulation. ■

Marine seminar 1978

The Board of Marine Underwriters of San Francisco will hold its second Marine Insurance Seminar on March 30th and 31st, 1978, at the Mark Hopkins Hotel. The program will be aimed primarily towards persons with some background experience in the marine industry. Generally, topics will include marine insurance, legal material of current interest and marine technology. For more details and an application to attend write the Board of Marine Underwriters, 233 Sansome Street, San Francisco, California 94104.

Do You Remember...

When the Cardinals won the World Series and the Packers beat the Chiefs in Super Bowl One?

When first class postage was 5¢; coffee sold for 77¢ a pound; unemployment was only 3.8%; the GNP was a 'measly' $796.3 billion and the 200 millionth American was born?

When the mini-skirt was reaching new heights; Katherine Hepburn and Rod Steiger won Oscars; "The Fugitive" was the hottest TV show?

When McCormick Place burned to the ground; Hurricane Beula caused 15 deaths and $208 million in damages and the Six Day War changed the face of the Middle East?

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By virtue of its strong editorial posture, Business Insurance has exercised industry leadership from the beginning. Editorials and news reports influenced loss prevention, risk financing and employe benefits. Editorial stands, which at times were unpopular with influential segments of the newsmagazine's readers, helped further risk and employe benefit management. Controversial subjects were treated with courage and fairness. And, the conviction of the editors never took a backseat to business expediency.

This courage, vision and leadership did not go unnoticed by readers and advertisers. Intense readership, reader involvement and response convinced advertisers that *here, finally, was a newsmagazine whose time had come and which was totally dedicated to the betterment of the business of its readers.*

Now, after a decade, with nearly 260 issues published, we who started it all, wish to thank our loyal readers and advertisers for their participation in our success. It has been an exciting partnership, one that will expand and flourish in the years ahead. In a field which has undergone many changes in the past ten years, there are still bigger things to come. The editors of Business Insurance will be there to report on the whys and wherefores of these changes.

As part of our birthday celebration, we will be reviewing the most exciting and significant risk management/insurance/employe benefit events of the past ten years. We will also try to predict where the field is headed. All this and a nostalgic look at where we were ten years ago will be part of this special Tenth Anniversary Issue of Business Insurance, to be published on October 31, 1977.

So come and celebrate with us. Our 'guests' will be over 36,000 subscribers (including pass-along readership—nearly 100,000 readers), all involved in the business of loss prevention, risk financing and employe benefit management as well as the industry which supplies products and services to it. It is an audience that is information-hungry and receptive to your advertising messages. *To be part of our celebration be sure to make your advertising reservation by October 18th... a date to remember!*

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There isn't a product made that can't be misused.

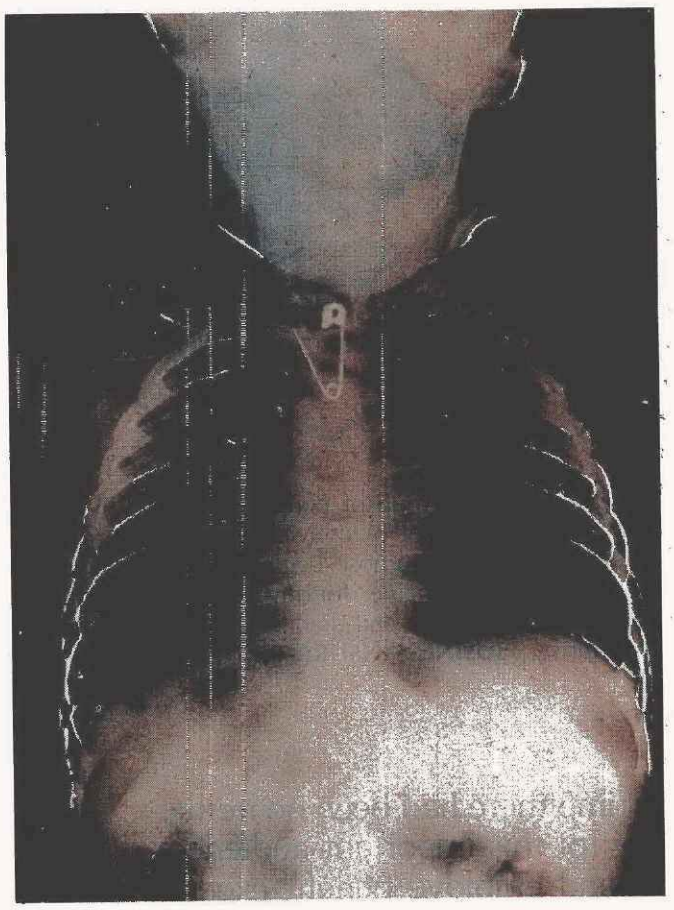
Even a safety pin manufacturer may not be safe today from misuse of his product. More than ever before, manufacturers and sellers are being held responsible by the courts for product-related injuries–even when the victims contribute to their own injuries.

A man who lifted a rotary lawn mower to cut hedges injured himself. He sued the lawn mower manufacturer and won. The manufacturer of a bench saw made in 1942 with the necessary safety equipment was ordered to pay $50,000 to a worker injured using the machine in 1971. The award was made despite testimony that a dealer rebuilt the machine without a guard.

In 1976 an estimated one million product liability claims were filed. And, in a recent eight-year period, the average award rose by 567% from $12,000 to $80,000. That's not pin money.

Some huge awards have actually caused plants to close and many people to lose their jobs. And the problem could get much worse.

More claims and higher awards mean, of course, higher insurance premiums.



Insurance, after all, is simply a means of spreading risk. Insurance companies collect premiums from many people and compensate those who have losses.

The price of insurance must reflect the costs of paying for those losses and the expenses of handling them.

No one likes higher prices. But we're telling it straight.

CRUM&FORSTER INSURANCE COMPANIES

THE POLICY MAKERS.

Administrative Headquarters: Morris Township, New Jersey 07960

Ever wonder when someone was going to tackle the issues of the day that affect your business? Crum & Forster is running messages like this in a continuing campaign in national consumer publications. All of the advertisements explain how the insurance system works and why premium costs are going up.

PERSPECTIVE

Wholesalers attack government meddling

By Robert L. Larsen, CLU
President
Insurance Administration Center Inc.
Des Plaines, Ill.

THE LEGISLATIVE INITIATIVES of the National Assn. of Wholesaler-Distributors working through its 103 commodity-line member associations with its 34,000-plus member-firm constituency are beginning to bear fruit! From Florida to Oregon, from Rhode Island to California, the wholesale-distribution industry has begun to flex its grassroots political muscle.

The national product liability crisis has awakened this sleeping giant which is now providing the leadership for the entire American business community in an all out effort at reversing judicially and administratively generated interference with the workings of the free enterprise system.

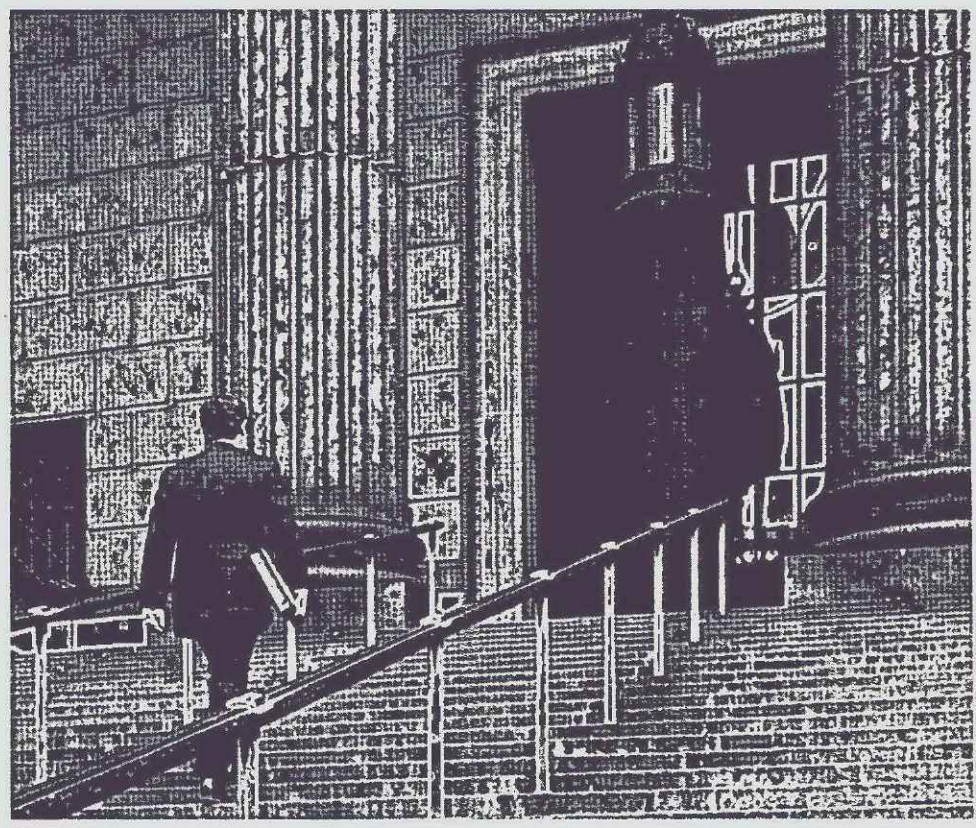
The Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Environmental Protection Agency, the Equal Employment Opportunity Commission, the Food and Drug Administration and a horde of consumer-action groups have effectively created, in the public's mind, an unflattering picture of the American business community.

Without question, the product liability dilemma has contributed greatly to the escalation of the price of goods and services and is preventing the introduction of new, technologically improved and more efficient products. This unwanted and unwarranted interference with the working of our free enterprise system is crippling managerial productivity, contributing greatly to our inflationary spiral, and debilitating efforts aimed at reducing unemployment. Jobs are lost due to the inability of American firms to compete with foreign competitors, especially Japan and West Germany, where governments cooperate with and assist business rather than assume an adversary role as experienced all too frequently here in America.

The growing product liability crisis now impacting negatively on the wholesale-distribution industry is clearly the result of excessive judicial intrusion in, and restructuring of, our tort liability system. The business community is all to well aware of the bureaucratic and judicial excesses initiated in absence of the expressed legislative intent of our federal and state elected representatives.

While the insurance industry can be criticized for failing to communicate effectively with the business community, it cannot be blamed for the high cost (and, for some firms, unavailability) of product liability insurance. Business must recognize that insurance premiums are generally nothing more than a mirror of the legal and political climate in which our litigious society exists. However, I feel strongly that the insurance industry can, and should:

- Cooperate more effectively with insured corporations in assuring safe products, manufactured in a healthy work environment.
- Provide a more stable insurance marketplace, less prone to the wildly cyclical movement of both price and availability of liability insurance.
- Communicate more effectively with the public by explaining the economic realities wherein excessively high medical malpractice and product liability insurance costs simply escalate the price of the goods and services. Insurance companies spend too much time and money holding industry meetings and talking to each other rather than to firms they insure and the consuming public.
- Make every effort to assure a free insurance marketplace. This means resisting administrative and legislative controls on price and product and letting competition guide the direction of what risks should be transferred to the private insurer and at what price. This is not to say the insurance regulators should not assure anti-monopoly, solvency and truth in advertising in the insurance industry. It does mean, however, that the private sector should respond to the need for health insurance for the aged, health care for the poor, flood insurance, crime insurance, etc. Undoubtedly, a legislative "nudge" would have been and will continue to be both necessary and appropriate in encouraging private insurance company involvement in less profitable or perhaps unprofitable risk transfer situations. Nevertheless, it is the free enterprise system, operating with legislative support, guidance and control, that can best meet the needs of our citizens.



Fundamental reform of our tort systems is one major step, says the president of Insurance Administration Center.

Fortunately, the wholesale-distribution industry, with its uniquely entrepreneurial direction, is now accepting the responsibility for leading the entire American business community back to its unique role in the world of manufacturing and distributing the best products, in the greatest variety, with widest availability, at the lowest cost. Do we have room for improvement in the quality, safety and price of the cost and service we deliver? Of course! But, viewed on balance, the free market economy (though battered and bruised by bureaucratic and judicial excess) remains today the great hope for the world as the mechanism for providing food, clothing, shelter (as well as the luxuries of life) in the best form and at the lowest price.

This is why the wholesale-distribution industry has launched a nationwide effort to effect legislative reversal of the negative result of well-intentioned, but clearly improper interference by state and federal agencies and the courts with our free enterprise system. Starting first in the state of Georgia and following into

Continued on following page

Retired lives reserve may provide answer to benefits for key executives

By Richard A. Hess, CLU
Senior vp, Schiff Terhune Inc.
New York

THE EFFECTIVE USE of the heretofore popular Section 79 may or may not be available in the future. Since November 1976 new Section 79 plans have not been approved.

Many of us have attempted to substitute older and more conventional methods such as deferred compensation and split dollar plans. In addition, an approach that has been given a lot of attention these days is the so-called employer-pay-all plans or Section 162 plans.

These plans have the corporations paying the entire premium for a permanent plan of life insurance on the lives of selected executives. The premium is considered as additional compensation to the executive, therefore deductible by the employer and income to the executive.

To properly offset the tax, the executive must pay for this benefit, the dividends are paid in cash to the employe and the employe has ownership in the cash value of the policy and can assign death benefits to a spouse, a trust, or other vehicle.

It sounds quite simple—and it is—though from the corporation's point of view it has relinquished all control and in many cases this is not considered desirable.

Many of us have been searching for some alternate methods that can provide a meaningful benefit to a key person while at the same time minimize the tax consequences and provide some string the employer can maintain on the arrangement.

The retired life reserve concept might be the answer. It works like this:

The employer establishes or maintains a group life insurance program for all of his full-time employes meeting the requirements of Section 79 of the Internal Revenue Code and the regulations thereto, to provide group life insurance benefits to age 65. At the same time he establishes the Retirement Life Trust to provide life insurance for each of the employes covered by the group program after they retire. In effect, the usual group life insurance provides each of the full-time employes with life insurance protection until his retirement. At that time the trust becomes obligated to provide life insurance benefits.

The employer will make premium contributions to the group life insurance plan in the usual manner. At the same time, it will make contributions to the Retirement Life Trust to provide for the continuation of the desired amount of group life insurance benefit after retirement. In designing the program the employer will determine the amount of life insurance to be provided after retirement and this will become part of the terms of the Retirement Life Trust.

The contributions by the employer to the Retirement Life Trust will be used by the trustee(s) to purchase and own a Retirement Life Insurance Policy (RLIP) on each participating employe's life.

The Retirement Life Insurance Policy is a level premium participating contract that is designed to provide full life insurance protection at age 65. The death benefit under this policy before age 65 is a return of premium or the cash value, whichever is greater.

At all times, both before and after age 65, the trustee(s) of the trust will be the sole owner and beneficiary of each Retirement Life Insurance Policy. In the event of the death of an employe before age 65, the death benefit under this policy will be received by the trust and used to meet its obligation to continue the policies on the lives of the surviving employes. This will reduce the employer's contributions in that year and possibly later years to the trust. The group life insurance plan will have paid the deceased employe's family the life insurance benefit provided under the group life insurance plan. Since the employe did not reach age 65, he had no rights under the Retirement Life Trust.

If the employe reaches retirement age and retires, he will have the right to convert the group term life insurance under the group life plan. From that time on the trust becomes obligated to provide a death benefit to his named beneficiary. The trust will have the Retirement Life Insurance Policy to meet this obligation. At the subsequent death of the employe (after retirement) the trust will receive the life insurance proceeds from the Retirement Life Insurance Policy and pay them to the employe's designated beneficiary, as provided for under the terms of the trust.

If an employe terminates employment before age 65, he will have the right to convert the group life insurance under the group life program. However, since he has not reached retirement age (65), he will have no rights under the Retirement Life Trust. The Retirement Life Insurance Policy on his life, which is owned by the trust, could be sold to the terminating employe for its then-present value. If the employe should not desire to purchase this contract from the trust,

Continued on following page

PERSPECTIVE

Government . . .

Continued from preceding page

Illinois, Indiana, Michigan, Pennsylvania, Florida, Texas, California (a total of 22 thus far) and ultimately into the 50 states, the wholesale-distribution industry is leading the fight to convince our elected representatives that fundamental reform of our tort liability system is clearly in the best interest of not only the business community but all of our citizens.

As legislative efforts proceed, keep in mind the following suggestions designed to minimize the possibility of product liability actions.

YOU SHOULD:

• Review your present insurance policies with your insurance consultant to make sure your coverage and policy limits are adequate in light of present conditions.

• Thoroughly review your public relations program. Make certain any communications made through or by you cannot be used against you in a subsequent product liability suit. Be aware that the public is highly product-liability minded and that any statements or admissions could be used as a basis for initiating a product liability suit.

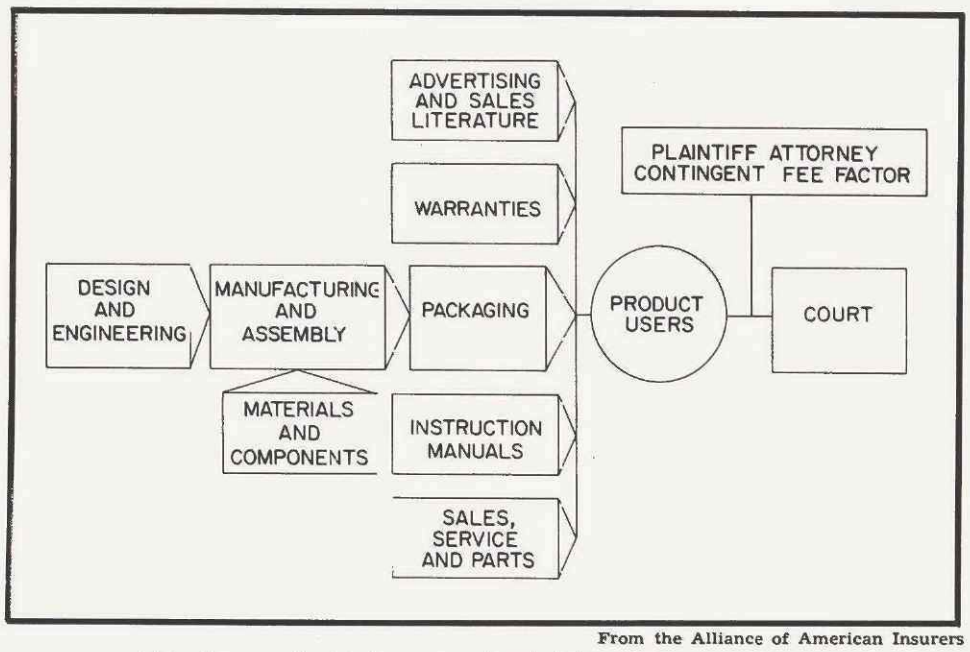
• Use these same precautions in your advertising, promotion and labeling of products you sell. Do not overstate the capabilities of your product, but do state or make sure a statement is made on any necessary warnings concerning the use of the product.

• Insist on thorough quality controls. The strict liability theory and the statutory obligations imposed on everyone in the marketing process by the Consumer Product Safety Act requires affirmative action on your part to assure that the product you sell is safe. Investigate the quality control programs of your suppliers, review their testing procedures and, where required by the Consumer Product Safety Act, after a standard has been established, obtain a certificate of conformance with the standard.

• Establish a safety policy that calls for regular inspection on your part, where feasible, to determine safety of particular products.

• Keep accurate records as to items purchased and as to their ultimate disposition. Wholesaler-distributors have been named as defendants in suits in some cases where their only known connection is that they distribute the type of product that caused an injury. Avoid this result by knowing where your products come from and where they have gone.

• Notify your insurance carrier immediately upon notice of a possible claim. Be sure to communicate all information to your carrier as accurately and rapidly as possible. Many times, a matter can be expeditiously handled when all parties concerned have quick notice and act on that notice before a minor claim has an opportunity to snowball into a major lawsuit.



From the Alliance of American Insurers

This diagram depicts how a product liability claim can originate.

• Participate actively in any claim negotiation. Most insurance policies reserve the right for the insurance company to negotiate a settlement, but your interests are involved and your active participation may eliminate future problems created by liberal settlement policies.

• Let your insurance carrier know about your objections to settlements for unwarranted claims.

• Shop for insurance when renewal time comes up if your present carrier either attempts to severely restrict your coverage or substantially increase your premium.

• Utilize your trade association. Support efforts to obtain legislative relief to combat the menace posed by product liability litigation.

• Consider suits against parties who utilize the court to file unsubstantiated lawsuits to harass and to force unwarranted settlements. There is no question that an injured party should have a means of redress when he has been wronged, but the courts should never be used as a club to pulverize the business community into payment for injuries for which they have no legal responsibility.

YOU SHOULD NOT:

• Without the advice of counsel, agree to or sign a hold harmless or indemnification agreement submitted to you by your supplier or customer. Such agreements have strong legal significance and could affect your own insurance coverage. Extreme caution in this area is recommended.

• Admit liability under any circumstances. The legal significance of any statements or actions you may take with respect to a product that has or may have caused injury should be carefully scrutinized by legal counsel.

• Accept a change in your insurance coverage from an "occurrence basis" to a "claims made" basis, or vice-versa, without carefully reviewing the effect on your particular operation and the availability of more satisfactory coverage from another carrier. Otherwise, you may find yourself without insurance coverage where you thought you had coverage, and any claim or cost of defense will be borne by you and not by an insurance company.

• Oversell your product or permit your representatives to state that the product does more than it actually can do. The mere fact that information is available, or even that it is actually heard or read, does not mean that it is effectively understood.

• Become complacent because you have never had a product liability claim. The trend of product liability claims is still relatively new and you may be just about to be hit with a suit that could endanger the very existence of your company.

• Permit an unauthorized or unsafe use of a product where you have knowledge of such possible misuse or abuse. Do not re-engineer a product unless you have written authority from the manufacturer to do so, or you are totally satisfied that any alterations or modifications you make will not affect the safe use of the product. Otherwise, such re-engineering could result in the imposition of a loss on you alone and could also affect your insurance coverage. ■

Reserves . . .

Continued from preceding page

the surrender value of the policy could be received by the trust and used to meet its obligations to continue the Retirement Life Insurance Policies on the lives of the surviving employes. Again the employer will benefit since his cost for maintaining post-65 death benefits for surviving employes under the trust will be reduced.

At all times, the employer should have no rights to have any monies that were contributed to the Retirement Life Trust revert to it. If any monies should ever revert to the employer, they would be taxable income at that time to the employer.

The contributions made by the employer to the trust are deductible under Section 162 of the code, if they are ordinary and necessary expenses of the trade or business. Revenue ruling 73-599 1973-2Cd 40, indicates that annual contributions by the taxpayer to a fund maintained by the trustee(s) for retired lives are business expenses, deductible under Section 162, to the extent that such contributions are actuarially determined and are level.

Revenue ruling 69-382, 1969-2Cd 28 indicates that if the taxpayer retains the right to recapture any portion of the reserve while any active or retired employe remains alive, the contributions are not deductible. For this reason, the employer will have no rights to recapture any portion of the contributions made to the Retirement Life Trust.

Of course, all premiums paid by the employer for the Section 79 qualified group life plan are also deductible under Section 162.

There is no current taxation to the employe before age 65 for the contributions to the trust since he has no present rights to the contribution or assets of the trust. (Section 83 of the code.)

For the Section 79 qualified group term plan, the only taxation to the employe would be the imputed income to him for amounts of insurance in excess of $50,000. (Section 79 and regulations thereto.)

At retirement (age 65) the Retirement Life Trust continues the retired employe's group life insurance benefits. As such, the retired employe incurs no taxable income since the regulations 1.79-2(b) provide that no amount shall be included in his gross income because of the employer-funded group term insurance if he has terminated employment and has attained normal retirement age.

Under both the Section 79 group term plan and the Retirement Life Trust, the benefits are received income tax-free by the employe's designated beneficiary pursuant to Section 101 of the Code.

There are no income tax consequences to the trust for the contribution it receives from the employer, since these contributions are being used to purchase a Retirement Life Insurance Policy on each employe's life. Further, there is no generation of taxable income to the trust. If the employe dies prior to attaining age 65, the return of cash value or premiums to the trust are not taxable to the trust since the proceeds are being held to pay future premiums. However, if the trust does earn income, such income will be taxable. If this should be a concern, it is recommended that the trust receive tax exempt status as a Section 501(c)(9) trust.

Under the group term program and the Retirement Life Trust the employe has an incident of ownership in that he can name and change the beneficiary. Thus, the proceeds of both programs will be includible in his estate. However, it is possible to assign the benefits under both the group term and the Retirement Life Trust and thereby remove the proceeds from the insured's estate.

Under the Section 79 group term insurance an assignment of the employe's rights would remove the proceeds from the employe's estate but in light of Revenue Ruling 76-490 premium payments by the employer might be considered gifts of a present interest to the assignee. ■

Risk Management Notes

Don't let your insurance company settle suits you want to dispute

By Warren, McVeigh, Griffin
Risk Management Consultants
San Francisco—Newport Beach

A well prepared article "Aviation Products Liability" appeared in the February 1977 issue of Lloyd's Log. With regard to products, the writer states:

"The underwriters retain the right to make such investigation, negotiation and settlement as they see fit. This is because circumstances can arise where they feel it would be advisable to litigate. The assured on the other hand may prefer to continue with a costly, no-hope defense in order to avoid, at least for awhile, the adverse publicity which might surround a negotiated settlement since it may be generally assumed that this implies an admission of liability."

First of all, not many companies would continue a truly "no-hope" defense, but there are certainly times where the insured would press a defense considerably harder than the underwriter. This is exactly the point where underwriter and insured come apart.

The competent risk manager and his firm will look at all claims and litigation from the overall long-range aspect of the corporation's future, considering factors such as its image with the public and long term effect of the precedent of an adverse settlement. Underwriters do not have this broad a view.

This is one of the principal reasons that risk managers look upon risk retention as a more effective tool of corporate policy than purchasing insurance. Of course there is the need to coordinate claims defense and cooperate with the excess insurers, but this can be accomplished.

Doctors and other professionals generally have a clause in their professional liability policy that prevents the insurer from settling without the consent of the insured. More risk managers should recognize the implications of this for his company, and press for comparable wording in general liability policies.

Underwriters will certainly resist this, but strong pressure from enough influential risk managers should be able to achieve results. ■

IF A COMPANY HASN'T LOOKED AT ITS EXCESS WORKER'S COMP RECENTLY—

Count on it.

Today's awards just naturally reflect today's economic realities.

And that's why many self-insured companies are suddenly finding their coverage is outdated and inadequate, especially if they experience a catastrophic loss involving multiple claims.

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With a capacity large enough to offer limits up to $15 million each accident over a minimum self-insured retention in some states of $100,000 each accident.

And a readiness to develop Excess Worker's Comp programs that fit the *specific* needs of the individual self-insured client.

One thing more: We're rated A+: Class XIII by Best's. So, write today for more information. We have facts that are vitally important to every alert executive.

AMERICAN HOME ASSURANCE COMPANY
NATIONAL UNION FIRE INSURANCE CO. of PITTSBURGH, PA.

Dept. A, 102 Maiden Lane, New York, NY 10005

Please send me information about your Excess Worker's compensation coverage.

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Company _____

Address _____

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If this ad gets enough people to act, your insurance may become a better buy.

"I burned my business to the ground.

Thanks, America, for helping pay for it."

—Anon.

Insurance rates are at record levels. Some types of coverage are becoming unaffordable.

Now then. Insurance companies are required to see that there is enough money on hand to cover losses as they occur. So rates are based on expected claims.

And frankly, rate increases could go on forever if the public is willing to pay for them.

But at The St. Paul we think people ought to know the score. Because ultimately they pay for high claims costs.

So we're running advertising like this. Hopefully, it will inform the public and encourage them to take a long hard look at what is happening and then take action.

And if that happens, insurance rates might just stabilize. That would be a nice change.

You can help. Get one of our Enough is Enough booklets from your local Independent Agent or broker representing The St. Paul.

It's full of information on the causes, the pro's and the con's of some possible cures for high insurance rates.

At The St. Paul we feel Enough is Enough.

How do you feel?

Arson fires cost over $1 billion last year. Who pays for this billion dollar bonfire? We *all* do.

When somebody decides to put a match to his business it is tough to prove. When arson for profit can't be proven, the insurance company has no choice but to pay. All of us contribute to these soaring damage claims by paying more for our own property insurance. Because insurance is merely sharing a risk among many.

What can you do about it?

Help to have arson classified as a major crime. One with the same high priority for prosecution as robbery.

Push for uniform state laws on reporting, detection and investigation. Laws that would make arson harder to get away with. (Over 20% of all fires are thought to be arson, yet only 1%-3% of confirmed arson cases result in conviction.)

Work for programs to improve investigation techniques and cooperation among fire fighters, police officers and insurance investigators.

Write to state officials.

Tell insurance commissioners, police and fire department officials that you would like to see some changes made.

Put pressure on local prosecutors and encourage them to get involved.

Let people know you've had enough.

Send for our "Enough is Enough" consumer booklet. It's full of information on the causes and the pro's and con's of some possible cures for high insurance rates. You'll find out how to register your views where they count. And how you can help hold down your own insurance costs.

Or you can just do nothing and figure the problem will go away. Of course, if it doesn't, better keep your checkbook handy.

Enough is Enough

Write The St. Paul for your "Enough is Enough" booklet. Or contact an Independent Agent or broker representing The St. Paul. He's in this with you and wants to help. You'll find him in the Yellow Pages.

St. Paul Fire and Marine Insurance Company, 385 Washington St., Saint Paul, MN 55102.

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Serving you through Independent Agents. St. Paul Fire and Marine Insurance Company/St. Paul Mercury Insurance Company/The St. Paul Insurance Company/St. Paul Guardian Insurance Company/The St. Paul Insurance Company of Illinois: Property and Liability Affiliates of The St. Paul Companies Inc., Saint Paul, Minnesota 55102.

dates for buyers

Sept. 28-30: RIMS Western Conference to be held in San Diego. Seminar topics include property, casualty, self-insurance, risk management, employe benefit trends and planning. There will be a panel discussion among five insurance managers from the western states. Cost is $75 per member. Contact: Phil D. Nico, he Wickes Corp., 110 W. A Street, San Diego, Calif. 92101; phone (714) 238-0304.

Oct. 3-5: Public Employe Benefit Plans: the Future is Now, sponsored by the International Foundation of Employe Benefit Plans to be held at the Sahara Tahoe in Lake Tahoe Nev. Discussions will cover recent developments in the field as they apply to social and legislative factors that will shape the future direction of public employe benfit plan programs. Among the topics under consideration will be PERISA, Social Security, national health insurance and Medicare, collective bargaining, alternate investment media, HMOs, plan design and communications. Cost: $195 for members; $255 for nonmembers. Contact: James Wisniewski, International Foundation of Employe Benefit Plans, PO Box 69, Brookfield, Wis. 53005; phone (414) 786-6700.

Oct. 6-7: Products Liability of Manufacturers: Prevention and Defense, seminar conducted by the Practising Law Institute to be held in Los Angeles. Also to be presented **Oct. 31-Nov. 1**, New York City. How to limit liability and avoid litigation will be examined. Recent trends in product liability law will be discussed by a faculty of attorneys, a high-level CPSC official and a law professor. Topics will include spreading the risk, defending the lawsuit, the interrelationship between insurance carrier, defense counsel and corporate counsel. Cost including course handbook: $200. Contact Nancy B. Hinman, Practising Law Institute, 810 Seventh Ave., New York, N.Y. 10019; phone (212) 765-5700.

Oct. 9-12: University Risk Management and Insurance Assn. will hold its annual conference in Lexington, Ky., at the Campbell House Inn. The split sessions, covering risk management and employe benefit problems, will deal with medical malpractice, trends of transferring risk in a teaching institution, alternate methods of funding, captives, update of property values, museum collections, athletic insurance programs, the liability transfer market, reinsurance for faculty and staff and risk-taking. Cost: $50 per member. Contact: Charles M. Hundley, University of Illinois, Room B-6, Coble Hall, Champaign, Ill. 61820; phone (217) 333-3113.

Oct. 13-14: Council on Employe Benefits 31st annual conference in Kansas City, Mo. Domestic and international benefits will be covered with special emphasis on employe benefit communications, health care cost and quality control, impact of Financial Accounting Standards Board, inflation's impact on Social Security and private pension plans, mandatory retirement and pre- and post-retirement counseling among other topics. Cost is $100 for members and $150 for non-members. Contact Carl S. Lazaroff, c/o Goodyear Relief Assn., 1144 East Market, Akron, Ohio 44316; phone (216) 794-4008.

Oct. 16-19: Canadian Risk Management Seminar to be held in Toronto, Ontario. Topics to be discussed will be: liability problems in Canada, environmental exposures, techniques of property values, employe benefits, contractual exposure, self-insurance and a general problem clinic. Cost: $90. Contact Ken Kerr, F.I.C.C., Stelco Hamilton, 100 King St. W., Stelco Tower. Hamilton, Ontario L8N 3T1; phone (416) 528-2511.

Nov. 7-8: Employe Benefit Communications Workshop, sponsored by Business Insurance magazine, Chicago. A dozen different corporate benefit communications productions will be screened and discussed, focusing on the elements of a prize-winning program; ERISA rules for benefit communication, choosing a consultant, budgeting for benefit communications and the employe and employer view of benefit communications are among the topics to be addressed. Screenings and critiques of audio-visual programs will be a crucial part of the two-day seminar. Herbert Zeltner, president of Herbert Zeltner Marketing & Communications of New York, will lead the session. Cost for early registration, including meals, is $285 before Oct. 26 with a 10% discount for additional registrants from the same company. After Oct. 26, registration is $320 and the 10% discount for additional registrants from the same company applies. Contact: Mary Ann Englehardt, Crain Education Division, 740 N. Rush St., Chicago, Ill. 60611; phone (312) 649-5241.

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Top party stablizes in Bermuda

NEW YORK — U.S. business leaders in Bermuda breathed a sigh of relief late last month as the ruling political party moved to stabilize itself.

The premier, Sir John Sharp, stepped down because of dissention in the ruling United Bermuda Party and was replaced by J. David Gibbons, the finance minister. Insiders see the move strengthening the UBP and their control of the government.

Hundreds of U.S. corporations maintaining captive insurance companies on Bermuda because of favorable tax and regulatory policies there, are watchful for any changes in the political climate that could affect their investments.

Bermuda has always been stable. However, the small cluster of islands some 600 miles east of the mainland U.S. has a population of 55,000, approximately 65% black and 35% white. The ruling UBP is controlled by the whites, while the Progressive Labor Party represents blacks.

Businessmen fear that should social and political antagonisms develop between the races and their political parties the resulting instability would drive away foreign investment.

"We were concerned," admits one U.S. captive insurance executive. "The opposition causes us some anxiety. No one wants to see racial or class disruptions," he said. "The prospect of having to withdraw from Bermuda and losing the substantial advantages in insurance operations here is troublesome," he concluded.

However, the UBP appears vigorous after the latest move. National elections won't be held until 1981 anyway, and insiders are confident that the UBP will continue governing. Moreover, spokesmen for the Progressive Labor Party stress their commitment to foreign investment in Bermuda. ■

New office

Gay & Taylor, a major multiple lines insurance adjusting firm, has opened a new branch office in Louisville. Located at 134 Executive Park, the office is the sixth Kentucky office operated by Gay & Taylor.

Keeping it hot the 'light' way

LOS ANGELES — Employes at a Los Angeles furniture factory can have their enchiladas and heat them too.

A Fireman's Fund Insurance Co. inspector, evaluating the spray paint operation, discovered workers were removing aluminum-wrapped packages from enclosures protecting the 1,000-watt lights used to illuminate the area.

The workers were heating the enchiladas they had purchased for lunch.

The result was a fire hazard, burn exposure and possibility food poisoning, the inspector said.

But the employes did not have to give up their passion for hot enchiladas. The company installed a microwave oven. ■

HUD, association squabble may drown U.S. flood program

WASHINGTON — A "family squabble" between the federal government and the insurance industry threatens to drown the eight-year-old national flood insurance program.

The Department of Housing and Urban Development (HUD), has insisted that it should exercise prior budget approval over its partner in the program, the National Flood Insurers Assn. (NFIA), a consortium of 132 insurance companies.

HUD has argued that the enormous growth of the program—more than one million policies are outstanding—makes it necessary for the government to exercise line-by-line control of the budget.

But NFIA has vehemently resisted tight government controls maintaining that it should have the right to exercise its judgment in the program rather than be a "fiscal agent for the government," which it believes would result from prior budget approval.

In testimony before a House banking subcommittee, Peter L. Maier of the Center for Responsive Law pointed out that NFIA's resistance to greater government control over its expenditures "raises serious questions as to whether NFIA intends to abuse the program."

Although Ruth Prokop, HUD's general counsel, did not charge NFIA with abusing policyholders, she acknowledged such a potential exists under the current financial agreement.

"We have no way of determining the validity of their (NFIA) data," she said.

Although tension between NFIA and HUD has been building for some time, the controversy assumed a more serious dimension when the Government Accounting Office issued a report charging the NFIA was unable to generate accurate financial data, making it impossible for HUD to determine subsidy amounts and premium rates.

The report appears to have been the straw that broke the camel's back. HUD shortly thereafter issued an ultimatium to NFIA: Either we have the right to approve the flood insurance budget or the program will be terminated at the end of the year.

That is where things now stand with both sides refusing to budge an inch on control of the budget. A compromise is viewed as unlikely by observers.

Unless a last-minute agreement is reached, HUD will ask individual insurance companies or associations to join the government in a new program with HUD exercising greater power of the purse than it previously has. ■

New reinsurance facility slated

SOUTHFIELD, MICH.—Russell Reinsurance Services Inc. announces a new reinsurance facility will be available next Jan. 1.

Transit Casualty Co., a Missouri-domiciled company with administrative offices in Los Angeles, will be represented by Russell Reinsurance Services.

Transit Casualty, a unit of Beneficial Standard Corp., had net premiums of $43 million in 1976. Current assets total $91 million and surplus is $21 million. ■

Keeping a name

Two Battle Creek, Mich., insurance companies have been granted the right to retain "federal" in their name. Under legislation signed by President Carter, Federal Home Life Insurance Co. will be the name for the merger of Federal Life & Casualty Co. and Peoples Home Life Insurance Co. U.S. statutes now prohibit the use of federal in new corporate names.

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Factory Mutual System

Earthquake experts plan to pool information

LONDON — Earthquake experts have been meeting under United Nations auspices in Paris to discuss the insurance problems of natural catastrophes which can shake major cities in the U.S. and other parts of the world.

They hope to initiate a pool of information which will enable specialist insurers to assess the risk of these disasters more readily.

Information from recent European earthquakes, such as the costly ones in Rumania and Northern Italy where the damage ran into billions of dollars, will be studied by the earth science division of UNESCO which sponsored the conference.

Reinsurance experts from the U.K., Germany and Switzerland have collaborated with seismologists from various countries in checking the technological details involved.

World developments in oil and minerals have led to big industrial installations in earthquake-prone areas where there was little plant at risk some years ago.

So the market capacity for earthquake coverage has to be examined in the light of recent catastrophes, as well as the obvious need for cover in emerging countries where building standards are not as high as they ought to be.

Concern is felt in some quarters that slackness in some of the so-called Third World countries in administering regulations can lead to an undermining of proper construction requirements.

If proper design rules are not being legally implemented by builders who prefer to cut corners, then major buildings can collapse more rapidly than would be anticipated.

But the main purpose of the UNESCO conference was to insure that world insurance capacity for these disasters is used to the best advantage in the long term. ■

U.K. agrees to payouts for vaccine

LONDON — Government leaders in the U.K. have now agreed to pay compensation out of public funds to children harmed in state-controlled vaccination programs.

These include 300 victims who suffered brain damage after being given anti-whooping cough vaccine in the past 10 years. Previously, those claims for help were rejected despite a massive campaign by their parents.

Lawsuits were threatened against doctors who had vaccinated the children at the request of the government's public health department, as well as against a firm which had manufactured the drug.

So after further protests, social service secretary David Ennals, told Parliament that all children whose health has been affected by vaccination programs will be compensated. But the exact details and amounts of the compensation will not be announced until a long term survey into product liability and other civil litigation is published this fall.

Efforts to encourage vaccination are now being renewed. Doctors fear there will be a further epidemic of whooping cough unless urgent moves are made to reassure parents that the risk of permanent damage to their children is remote.

Only one in 300,000 children is believed to have suffered brain damage through whooping cough vaccine.

Benefits of vaccination usually outweigh the risks, states a government medical committee, which fears there may be a big epidemic of whooping cough in Britain towards the end of this year. ■

Broad pesticide standards slated

WASHINGTON—The Occupational Safety and Health Administration (OSHA) plans to issue next year a broad-based set of health rules covering all manufacturers of pesticides.

The pesticide standards will establish general rules for safe work practices in the 7,200 plants where pesticides are formulated.

The issuing of a general standard covering an entire industry that formulates thousands of different products represents a dramatic shift in policy for OSHA which traditionally has issued health exposure standards on an substance by substance basis.

Under the proposed standard, which will be unveiled officially early next year, pesticide producers will be required to provide periodic medical checkups and inform employes of known evidence of hazards and symptoms. ■

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Arson squads mushroom, FM survey finds

NORWOOD, Mass.—Seven out of 10 fire departments in the nation now have arson squads, according to a Factory Mutual survey, clearly indicating the severity of the problem.

Factory Mutual, the nation's largest insurer of industrial property, surveyed over 100 fire chiefs at their recent conference.

Half the arson squads now on the job were established since 1970, the survey found. Many of the squads were formed in the last several years as arson seemed to skyrocket. Sixty percent include police officers.

But the Factory Mutual survey found that training for arson investigators is of uneven quality. FM characterized some programs as "continuous and thorough" while terming others "haphazard" or nonexistent.

Schools and universities provide 46% of the training for arson investigators; state agencies provide 31%. Most departments require only two to four weeks of training.

The fire chiefs said not paying suspect claims is the most important contribution insurance companies can make to reducing arson.

"Despite legislation which in many instances mandates prompt payment," said one, "the industry ought to make more of an effort to take profit out of incendiary fires." It is often difficult to bring charges that arson has occurred once an insurance payment is made, FM said.

The chiefs also called for increased cooperation between insurance adjusters and arson investigators and more on-site inspections before an insurer agrees to provide coverage. Insurance companies should also support legislation to strengthen arson penalties and should finance research and training programs for arson squads.

The chiefs listed nine measures for controlling arson:

- Increased coordination, particularly between police and insurance companies.
- More money.
- More men.
- Establishing a national arson program and a national information bank.
- Greater interest on the part of state governments.
- Increased financial support from the federal government.
- More effective prosecutions.
- More research on the causes of arson.
- Better pretrial preparation by prosecutors.

"We have some clear cut direction in which insurance companies can move," said Factory Mutual vp Bruce P. Mattoon. "The industry can lobby to have some of the restrictive laws changes. It can increase its support of public education campaigns and professional training courses." ■

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N.E. loggers end up in assigned risk

WASHINGTON—Most loggers in New England have ended up in assigned risk pools for workers' compensation after a major insurance company cancelled an innovative group insurance program Aug. 1.

The Zurich-American Insurance Co. terminated the program which covered the 1,000 members of the Northeastern Loggers Assn., claiming it was losing money on the account and that the loggers have failed to cooperate in carrying out safety programs that Zurich-American had developed. *(Business Insurance,* Aug. 8.)

Employers placed in the assigned risk pool have been slapped with an automatic 8% surcharge above the annual prevailing premium. Even so, they are the lucky ones; some small loggers, those with less than 10 employes, have been unable to obtain workers' compensation coverage anywhere and may be forced out of business.

The real tragedy, however, is not the sharply higher rates New England loggers will be paying for coverage. Of greater significance is that the termination of the program means loggers will lose the valuable loss control engineering services Zurich-American once provided.

Without loss control services, which are not provided in a risk pool, more injuries and deaths will occur forcing rates to climb still higher, said Ernest E. Poore, who along with partner Les Young, runs ForPac, the Norwich, Conn., forest products agency that developed the loggers' group plan.

Under the group program, enormous progress had been made in getting loggers to adopt safe work practices, Mr. Poore said.

Mr. Poore will continue to fight for coverage but warned in "today's climate, I don't think we are going to find an insurance company that is going to write this coverage on a voluntary basis." ■

M&M's Harold Hines

Revamp underwriting, broker suggests

By SUSAN ALT

CHICAGO — A top executive of the nation's leading insurance brokerage firm called for a revamping of insurance underwriting, eliminating much of the subjective judgment now present and substituting more computerized data on which to base decisions by skilled specialists.

Harold Hines Jr., executive vp of Marsh & McLennan and head of the firm's Midwest region, told his audience at the annual CNA reinsurance conference here that underwriting is only one of the insurance functions that could benefit from better definition, organization and control of tasks required to perform the job.

Other areas of insurance that could use this same approach, said Mr. Hines, include sales, investment and claims management.

"Underwriting judgment in the insurance industry has historically been an intuitive process that draws on assumptions about past experience and projects them to future expectations. Good practitioners have good memories, excellent perception about competitive pricing policies and an educated feel about catastrophe potentials," Mr. Hines said. "From such insight, marvelous results should follow.

"The trouble is," he continued, "they frequently don't and the process of failure is costly. Many people make many decisions on an ad hoc problem-by-problem basis that avoids the catastrophe but also loses much profit potential (for the insurer)."

The underwriting task as now constituted in insurance companies is virtually obsolete, said Mr. Hines, because it relies on incomplete information and generalists' knowledge instead of specialists' skills. "In order to cut the cost of the underwriting process and to increase the probabilities of more profit (for insurance companies), accurate information must be substituted for memory, specific knowledge must replace tenuous perception of pricing and correct interpretation of ultimate hazards must supplant stereotyped views of catastrophes," said the brokerage executive.

Mr. Hines suggested that underwriting decisions now made by generalists spread around the country should instead be made by centralized staffs of what he called "knowledge workers," including economists, analysts, actuaries, statisticians and computer scientists. Data should be collected in computerized data banks by economists who can scan the socio-economic system for relevant trends. Analysts trained to assess specific industries can scrutinize the information, he asserted.

"If these two disciplines work together, models of expected and catastrophic loss of a particular business in a general industry can be structured," he believes.

These models would, of course, be influenced by two equally important environments, said Mr. Hines: That provided by statistics and that provided by actuarial sciences. "Statisticians collect data about loss experience for many enterprises and for a specific business eager to purchase coverage. Actuaries relate the specific to the general to calculate probabilities and to determine their influence on pricing and on catastrophe potentials."

Although policyholders have criticized the insurance industry for underwriting methods which result in allegedly unfair premiums for firms which have clean loss slates, Mr. Hine's criticism of the industry was directed solely towards its inability in recent years to improve profits.

Insurers' productivity, he said, has been relatively stagnant in an era when other service businesses have been making significant gains. ■

Shirt-Sleeve Forum

Is Finding Products Liability Coverage A Problem?

By Dinner Levison

(Asked in the financial district)

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Good service can help

CHICAGO — An insurance company can increase its profits by minimizing policy terminations through good service to policyholders, said Philip H. Dutter of McKinsey & Co.

Speaking at a CNA conference here on reinsurance, Mr. Dutter said this is one of three ways insurers can raise their profits. The others include achieving operating efficiencies to stem the effect of inflation and keep expense performance close to assumptions which are built into rates and by improving investment performance.

He chided insurers for "too little understanding of what it takes to make a strategy work and too little concentration on achieving real excellence in meeting . . . requirements for success." ■

Firms must demand speedy court cases

CHICAGO — Joseph Cottrell, chairman of ill-fated National Student Marketing Corp., urged that businesspeople demand from our judicial system "the ability of every man and/or organization to resolve legal disputes within 12 months from the time of inception."

This is one of the lessons he has learned, he said, from the near-demise and painful rebuilding of NSM since 1970. Mr. Cottrell spoke at CNA's annual reinsurance conference here, telling his audience that "much blame falls upon business and the rich, if they use their power or money to prevent the less-strong from having their day in court.

"It seems this lesson has particular relevance in the insurance industry, where the temptation to prolong a settlement can be so very strong and of immense benefit to the lawyers, and sometimes a great hardship on both the claimant and to our stockholders."

The first lawsuits in the NSM case were filed in February 1972 against 52 defendants, Mr. Cottrell said. Right now NSM still struggles with one case, and "the other 51 defendants, for the most part, have been unable to extricate themselves, even though it is presently estimated by our counsel that over $15 million have been spent for lawyers for all sides."

He cautioned that the more lawyers trained in U.S. colleges, "the greater will your need for watchfulness become, if we are to prevent self-serving processes by our staff and outside counsel and long term damage to our public image." ■

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A legal affairs chief also manages risks for pipeline company

By HARRIET KING

VANCOUVER, B. C.—One wall of the comfortable office is lined with law books, including tomes of Halsbury's Laws of England and the Canadian Bar Review. In his shirtsleeves, behind the large desk heaped with books, papers and reports, sits the man responsible for legal affairs, secretary Glen A. Irving, who also manages the insurance risks for Canada's Trans Mountain Pipe Line Company Ltd.

The pipeline and pump stations account for the company's biggest risks, says Mr. Irving, a lawyer who has been with Trans Mountain for six years.

The 24-to-30-inch diameter, 715-mile line which begins at Edmonton and wends its way westward, crosses two mountain ranges before it terminates near Puget Sound along Canada's western border. The line's capacity is over 400,000 barrels of oil a day and it carries more than 10 varieties of crude oil. Storage tanks hold more than 4.5 million barrels for the Vancouver-headquartered company.

Mr. Irving says the exposures are substantial because of "the nature of the pipeline business." Each barrel of oil has a market value of $11 to $12 and "we don't own any of what we ship," he notes. The major exposure is a possible rupture of the line as a result of a third-party digging or building in the right-of-way area.

But, he stresses, "I hesitate to call it a high risk business." The company's 203 employes are trained and experienced, he says. Over 70% have been with the company (which had $37.6 million in sales last year) since it was formed 23 years ago.

"And the right-of-way is clearly marked. The line is buried 30 inches deep and markers are on every fence and road crossing. The markers warn there is danger from a high pressure oil pipeline. It is marked as clearly as we can make it.'

However, he adds that the markers "don't always achieve the hoped-for result. When the B.C. department of highways was doing some recent work, we staked the entire line in that area. The highway crew knocked the stakes out although they didn't rupture the line because steel is a tough product."

Pressures vary between the various pump stations but in most cases a rupture would not result in a geyser-like effect, he says.

If an accident to the line does happen, "our intention if we incur a loss is to get a recovery," says Mr. Irving. "We have proceeded to litigation on several cases. If the damages require cutting out a section of pipe and replacing it, I figure we're looking at upwards of $25,000 in repair costs."

The property insurance program covers physical damage on an all-risk form and includes business interruption.

Mr. Irving relies heavily on his broker, Cyril G. Penn, senior vp of Reed Shaw, Stenhouse Ltd.

"We could take the program we've evolved and use it on any pipeline project in the country," Mr. Penn notes. "It's a single policy with 10 subscribers, led by Lloyd's of London. A single package picks up all physical damage and business interruption." Mr. Penn handles 10 corporate accounts, but Trans Mountain is one of his largest.

Mr. Penn adds that an oil pipeline is "a sensitive subject. Environmentalists wave a big flag. Possible environmental damage is where our principal liabilities lie. So when we view ourselves in terms of assets and the type of business, it's just a matter of common sense to not put shareholders equity at risk, and to have a substantial insurance program.

"Philosophically, our program is geared to take care of the biggest

Continued on page 82

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Trans Mountain . . .

Continued from page 81

catastrophe we have imagined. Trans Mountain spends dollars on top limits at the expense of lower levels of what could be insured, but actually uses self-absorption of the risk."

Business interruption is part of the property package. If an accident occurred, the company would be compensated for loss of revenues plus the materials.

"But so far, we've been able to pump ourselves out of a loss of revenues situation," says Mr. Irving. "That is, we have sufficient spare capacity so we can accommodate down time. In my experience, we've had interruptions in business, but have never lost a penny in revenues. But this could become a more important consideration as our capacity picks up."

The line's capacity is 410,000 barrels a day but presently the company is moving only 130,000 barrels a day.

"A year ago when we were operating at capacity, we were working right up against the pin," says Mr. Irving. "If we had to overhaul an engine, we couldn't afford a loss of freight, so we might take the load off for an hour or so and overhaul one cylinder a day."

The company is currently applying for a contract to handle the crude oil soon to be shipped south from the new Alaskan pipeline. Plans envision alternating the flow of oil, pumping both east and west on a 14-day cycle. They'd like to pump four to five days westbound, have a one day turnaround and then pump eight or nine days east before repeating the cycle, which would do away with much of the company's spare capacity and increase the importance of its business interruption coverage. (Capacity has declined because the Canadian government has restricted the amount of Canadian oil that can be exported.)

Broker Penn says that a key to Trans Mountain's insurance program is the loss prevention feature of the company's first-rate pipeline maintenance program.

"The standards are high, with the use of everything from helicopter patrol of the line, land patrols and continuous maintenance of the line," says Mr. Penn.

Mr. Irving indicates, too, that part of the loss prevention program involves hydrostatic tests of the line every few years. The line is filled with water so that it reaches a stress factor of 1,400 pounds of pressure per square inch. The line is also under cathodic protection, coated and wrapped so that the external corrosion is minimal.

The company spends in excess of $1 million for a Linalog Survey, also a part of its loss prevention program. In this method, an instrument package moves through the line with the oil to take readings all around the inside of the pipe. The information is coded into charts which can tell if there is a loss of metal due to internal or external corrosion, if the pipe is out of round, that is, flattened in a place or has a dent. Maintenance people then can check any abnormalities.

The company has also spent "a good deal" of money to upgrade its pipeline system in the wake of new environmental laws.

Explosions are part of property coverage, but the company self-insures against breakdown of machinery. "We have fairly substantial deductibles through the program, but breakdown and collision of autos are the only truly self-insured programs we have," says Mr. Irving.

The company's casualty program is layered with primary comprehensive liability coverage overlaid by a series of umbrellas.

And at the "foot" of the program is an environmental impairment program. "We're unusual in that it does what it says," says Mr. Irving. "We have full pollution coverage from any form of pollutant. This does not have to be a sudden or accidental flow, that is, it could be from a slow leak, an occurrence that is not an accident according to the usual definition.

"Only one market writes it out of London, although it is actually composed of a group of European insurers out of Switzerland. Luckily, we have never had to rely on it." The coverage originated in London and is now available to companies worldwide.

The property end of Trans Mountain coverage "has a single loss limit for all property and business interruption. It has worked out well but we haven't had to call on that," says Mr. Irving.

"The simplicity of it is that it is an automatic form of coverage. If there is a change in assets of the company, nothing has to be reported although any level can be changed. We're pleased, because it covers three areas of exposure. It has one limit of coverage on a loss and we're not concerned about the makeup of the loss."

Fidelity coverages are standard blanket bond policies.

Mr. Irving notes that "we've had a good system over the years. For starters, there have been a limited number of people handling the insurance function—namely my predecessor and me. And we have always been with Reed Shaw Stenhouse. They've had a total of four persons involved in the account over some 23 years.

"Essentially, we don't have many losses," says Mr. Irving, "so we have one adjustor who handles the bulk of the work and he knows our system. Except for the occasional odd unpleasant thing, we've had a satisfactory relationship.

"The only major problem occurred when we ran into a loss and found ourselves whipsawed between two insurance companies. But Cyril (Penn) has been quick to make adjustments in the program." Mr. Penn has handled the program since 1968.

Insurance, too, has always been handled out of the secretary's office since the secretary handles legal affairs. "If a company has a legal department, it makes a whole lot of sense that that is where it should be," says Mr. Irving. He works at insurance in "fits and starts," but doubts that he spends more than 5% of his time on insurance "except for the odd occasion where we'd have a loss. Then, I spend 110% of my time on it."

Mr. Penn believes the Canadian market "tracks two years behind the U. S. market. We've just gone through a cycle of tight capacity. There's been violent rate increases in property coverage. But this is slowing down and the market is showing signs of softening. But liability started hardening 18 months ago so that the market is short of capacity. Few insurance companies are involved in some areas and, those that are, are sharing unrealistic premium levels."

Mr. Irving doubts that he would hire an assistant to handle insurance or a full time risk manager. "We're not big enough to try that yet, to bring in an outsider. We're happy with the route we've chosen—that of relying on our broker. We just don't feel it would be sensible at this time to do otherwise." ■

Shotgun? Not

Commonwealth Oil finds 3-month D&O policy

By REBECCA A. FANNIN

NEW YORK — Troubled Commonwealth Oil Co. has been able to replace its directors and officers liability insurance, but only for three months and with reduced limits.

Commonwealth faces lawsuits from disgruntled shareholders and a number of directors resigned when it appeared the firm would be unable to find a D&O insurer.

The new policy with an unnamed offshore insurer has a limit of $5 million, down from $10 million.

"It's hard to tell what will happen after the three months are up," said a spokesman. "That's three months down the road and so many things could happen between now and then."

Commonwealth's previous insurer, Lloyd's Group, protected officials from damage claims initiated by shareholders until the policy expired Aug. 27.

The new policy offers the same basic coverage as the previous one except for the reduced limits, according to Joel Rebeck, Commonwealth risk manager. Mr. Rebeck declined to comment about premium rates or length of time required to negotiate the coverage.

Commonwealth has been losing large sums since mid-1974. It reported losses of $8.6 million in the first half of this year and its total indebtedness amounts to $275 million.

Six of the eight directors who resigned were with the Tesoro Petroleum Co., a move that was expected, Mr. Rebeck said.

Tesoro, a San Antonio-based oil producer and refiner, had obtained a 37% interest in Commonwealth in the spring of 1975. But in January Tesoro relinquished control of the board.

The move to relinquish control occurred as shareholders filed a suit earlier this year which accused Tesoro of "grossly mismanaging Commonwealth" when Commonwealth was "totally under the domination" of Tesoro.

According to the Wall Street Journal, the Tesoro directors resigned after relinquishing control because of "mounting concern within the company about what their presence on the board implied."

Two directors, who were elected to the board prior to the time when Tesoro obtained the 37% interest, also resigned. If Tesoro's entire contingent had remained on the board following the departure of these two other directors, its officials would once again have controlled the board, according to the Journal.

Although Tesoro directors have resigned because they feared their continued presence on the board could be interpreted as improper control of the company by Tesoro, cancellation of the insurance also had some bearing.

"I'm sure that the resignations had something to do with the cancellation of insurance but it was not the principal reason," said Mr. Rebeck.

Meanwhile, Commonwealth may be able to avoid bankruptcy if Ashland Oil Co. decides to proceed with a proposed $50 million purchase of new Commonwealth convertible preferred stock. Ashland was to have decided by Sept. 1 whether to purchase the stock but requested an extension of its right to buy until Sept. 30.

Previously, Ashland aided Commonwealth in the purchase of raw materials.

Commonwealth's banks and other lenders have also formally agreed to extend for 30 days the deadline for repayment of the company's indebtedness. ■

Food firm sets captive in Bermuda

By SUSAN ALT

TARRYTOWN, N.Y. — Kane-Miller Corp., a $900 million-a-year food processor, established a captive in Bermuda to reinsure its general liability, product liability, auto liability and workers' compensation risks underwritten by Ideal Mutual Insurance Co.

Fred S. James International is managing Superior Insurance Co. Ltd., said Norman Hoffman, director of insurance.

Kane-Miller was formerly insured with The Home Insurance Co. under a retrospectively rated plan through Penn General Agencies of New York.

Under the new program using Ideal Mutual and the captive, Mr. Hoffman hopes to save about $500,000 a year from the $2.5 million in premiums he had been paying annually for less coverage. Ideal Mutual will provide the first $1 million of coverage in each exposure area, with the captive used to reinsure the first $100,000 of each loss.

Ideal Mutual is including Kane-Miller under its reinsurance treaties for the $900,000 of risk which it holds to provide stop-loss protection, said Mr. Hoffman.

Kane-Miller has excess coverage above the $1 million up to $30 million with Lloyd's of London, through James. This is being left unchanged.

Kane-Miller's coverage of product liability risks is substantially improved under the captive program. The firm has been forced to self-insure the liability risks of at least one product—animal food—for the entire $1 million, although all of the rest of Kane-Miller's products have had product liability retentions of only $100,000. All product risks are fully covered and are treated equally under the new program, Mr. Hoffman said.

Mr. Hoffman also considered a chronological stabilization plan involving financing by General Reinsurance Co., through Penn General, before awarding the business to James and choosing the captive route.

"We also considered pooling our risks with those of other captives but decided against that because it would have created risks for us rather than reduced them," said Mr. Hoffman.

Kane-Miller is paying Fred S. James & Co. a flat fee that works out to be between 3% and 5% of the firm's former premium. "We think James' technical services division will be able to provide a more sophisticated loss control program and closer supervision of accident prevention to reduce our losses," Mr. Hoffman said.

Kane-Miller is involved in a variety of food-related businesses, including meat packing, wineries, bakeries, hog slaughtering, chicken growing, cheese making and processed foods. ■

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Insurers foot bill

Project to establish prepaid legal costs

By REBECCA A. FANNIN

NEW YORK — Insurance companies are sponsoring a research project with grants up to $5 million that aims to establish fee structures for prepaid legal coverage.

The project will provide the first data on the cost and use of open panel prepaid legal services.

Data will be obtained under actual conditions. Two million individuals in three states—New York, New Jersey and Connecticut—will serve as guinea pigs. They will obtain legal benefits under the project at no cost for a one-year period.

Figures on the participant's cost and use of the services will then be distributed only to sponsors. Among the insurance company sponsors are Metropolitan Life and Aetna Life & Casualty. Union Labor Life and Blue Crest Plans Inc. have also become sponsors.

Grants by sponsors will be used to provide benefits to plan participants. Benefits will be scheduled according to how much money is received through grants.

The key to the open panel project is that participants will be permitted to select their own attorneys, unlike closed panels in which attorneys are chosen by the plan beforehand. Although the open panel will provide attorneys, they will only advise what legal action should be taken.

Then if the enrollee decides to take legal action, he can either go to his attorney or chose an attorney from a complete listing of all attorneys in the three states. The list will include these attorneys' fees, background, experience and areas of concentration.

The list will be prepared by computer and all attorneys in the three states are urged to enlist.

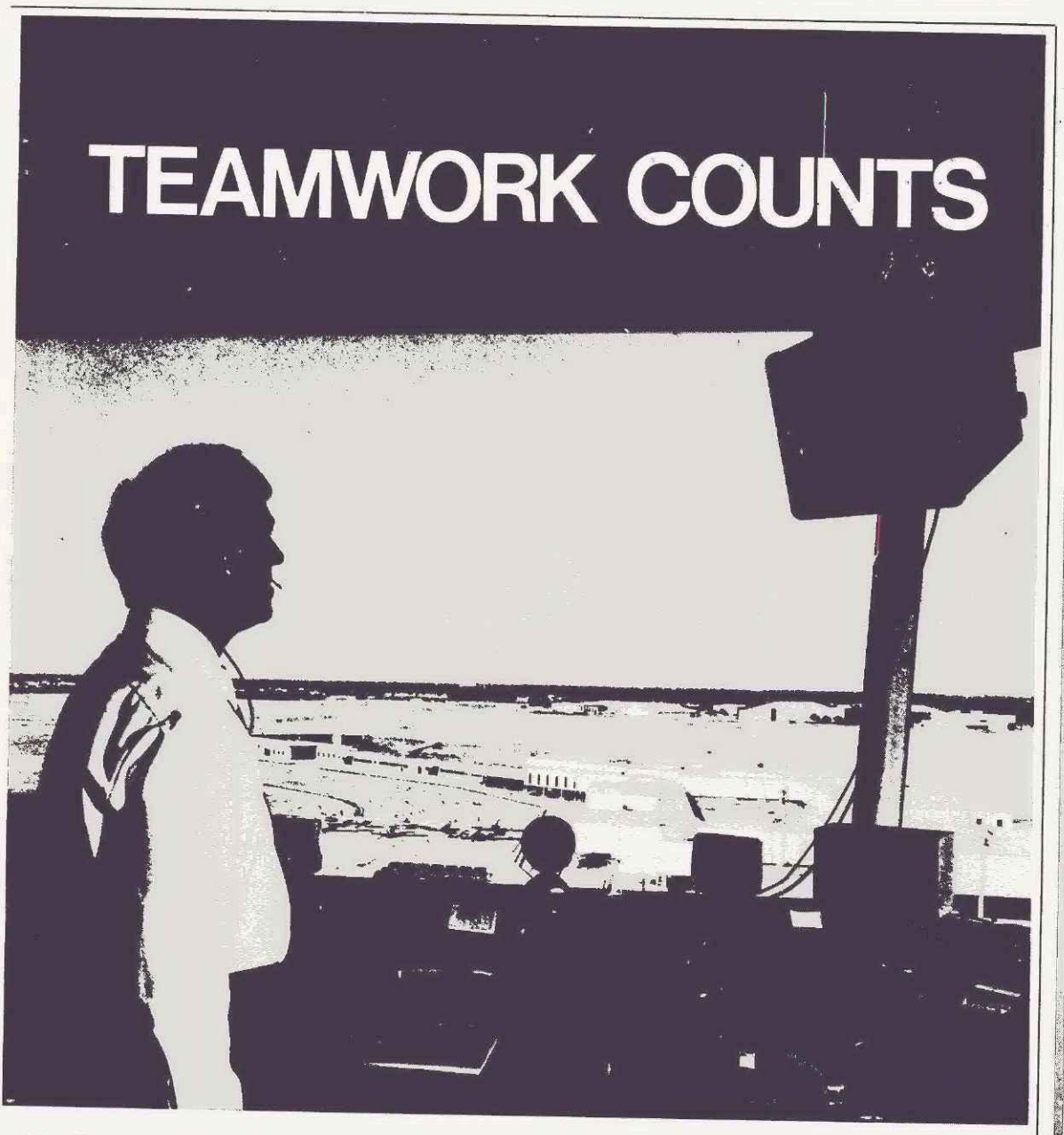
Computers will also be used to record how often the two million members use legal services and for what reasons. Services provided will be wills, divorces, landlord and tenant matters, criminal proceedings, adoptions, real estate agreements, bankruptcy, insurance claims, name changes and family court matters.

Approximately 500,000 have enrolled as benefit participants for the project that begins Nov. 1. They include members of 26 unions such as United Brotherhood of Carpenters, Professional Fire Fighters, Bricklayers Masons and Plasterers and local Teamsters unions.

To become a sponsor contact project director Elias C. Hoppenfeld at Liss Public Relations Inc., Station Plaza, 250 East Hartsdale Avenue, Hartsdale, New York 10530 or call at 914-472-5900. ■

Purchase

National Claims Service of Richmond, Va., has purchased the assets and name of Capco Adjusters Inc. from Emmco Insurance Co. National Claims Service is an independent adjusting division of Market Service Inc. The acquisition will give the company fifty offices nationwide.



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riskWatch

By REBECCA A. FANNIN

D&O's U.S. father is proud, not complacent, about his baby

Joe DeAlessandro is celebrating the tenth anniversary of a job he loves: Promoting and underwriting directors and officers liability insurance for American Home Assurance Co. And his claim to fame is that he fathered the marketing of directors and officers liability insurance.

While Mr. DeAlessandro gives credit to Lloyd's of London for creating the policy in 1953, 13 years before he began to promote it, a plaque in his office still proudly proclaims him the "father of directors and officers insurance." He's got a lot to live up to though if the plaque is any indication. It proudly positions George Washington above the words.

Fannin

Joe DeAlessandro is a proud father but he hasn't been seen lately smoking any cigars to celebrate his self-proclaimed success in marketing the coverage. He hasn't become complacent even though he thinks directors and officers insurance "has etched out a permanent position in the corporate portfolio."

Joe's baby has grown up a lot in the past 10 years but he still shelters and protects it. When he speaks of the policy, he can only boast. Words seem to tumble from his mouth like the rhetoric of a news release.

He knows that his "baby" still hasn't matured. But if anyone can bring it up properly, Mr. DeAlessandro can. He's a big man with ambitions to match and his steely eyes show that he's determined to continue convincing clients that they desperately need D&O coverage.

The reason for its startling growth, he says, is that American Home "anticipated the market correctly." He began years ago promoting D&O for all it was worth because he recognized that corporations were trying to attract quality directors but that they were concerned about litigation, especially after World War II and the initial emergence of conglomerates.

Mr. DeAlessandro didn't need to worry that his brainstorm to promote the coverage was a false start. He was reassured about the need for the specialized coverage, he says, one year after he began marketing it. That was when the 1968 Delaware statute permitted directors to be indemnified for expenses from settled derivative actions (suits on behalf of corporations by their shareholders) and third party actions.

Still, the going wasn't easy. "Ten years ago," he notes, "D&O insurance was viewed as an expensive luxury that buyers didn't need—like a fire extinguisher on the wall that was there for shining but not for using."

He thinks that these "non-believers became believers" after the Penn Central case, which he calls a "banner occurrence that highlighted the need for the insurance." Lloyd's did pay $2.4 million to settle a five-year tangle of lawsuits against the railroad's directors and officers. But what Mr. DeAlessandro doesn't mention is that Lloyd's later sued Penn Central to rescind the policy it had underwritten, contending that the railroad officials had lied on their applications for coverage.

Another subject Mr. DeAlessandro wants to avoid is the number of claims submitted to his company by the 5,000 firms it covers. He smiles when asked to disclose the figures, but his smile seems to mask his feeling that it's none of our business. Insurance buyers will have to remain in the dark about whether they are getting a good buy for their dollar.

He doesn't mind saying, however, that his company has never paid any claims that he knows of from losses arising out of political slush funds. This raises an interesting question. Why then did American Home rush to exclude this exposure from its policies before this area even became a problem?

He sheds his "I've got a secret" stance, however, as he predicts prices won't be going down but will be stable or will increase moderately perhaps, "depending upon experience."

Mr. DeAlessandro eases into a more comfortable position as the subject turns again to the successes D&O insurance has chalked up. He begins to view me in a less formidable light. (Perhaps I won't even be pestered by any more requests to see my interview notes.)

He boasts that corporations are buying as much D&O insurance as their "budgets will allow." And he points out that his company alone is underwriting one-third to one-half of all the coverage written in the U.S.

But Mr. DeAlessandro's pride in his "baby" may be a bit premature since the policy is only 10 years old for the majority of policyholders. After all, it's only after the growing-up stage ends that the true tests begin. ■

Employers of Wausau restricts underwriting

Eye-popping comp hikes urged in Minnesota

By KATHRYN McINTYRE ROBERTS

MINNEAPOLIS—Underwriters of workers' compensation in Minnesota are asking for an eye-popping 71.8% average increase in manual rates.

And the largest underwriter of workers' compensation there, Employers Insurance of Wausau, says it is "looking at reducing our exposures until the rate situation levels out" with losses.

The Minnesota Compensation Rating Bureau, which has filed for the rate increases on behalf of the 260 underwriters of workers' compensation in the state, is braced for "a lot of opposition and interrogation," its general manager said.

If approved, the rate increases will glean another $153 million from employers in workers' compensation premiums, totaling an annual statewide bill of $366 million compared with $213 million now.

The bureau is armed with defenses for its rate filing. The impact of recent legislation liberalizing benefits, past experience of underwriters in Minnesota and forces requiring the application of a trend factor, have contributed equally to the need for hiking rates, said J. P. Hildebrandt, general manager of the rating bureau, without apology.

Legislative action to increase the maximum weekly benefit to $197 from $145 effective Oct. 1 is a "big kick" in the rates, said Mr. Hildebrandt. The new benefit is up substantially from $45 just 10 years ago, he stressed.

In addition, Minnesota now requires an annual adjustment of benefits tied to the statewide average weekly wage, controlled only by an annual 6% cap. "A $300,000 case becomes a $1 million case with the escalator," said Mr. Hildebrandt.

Experience of workers' compensation underwriters in the state shows rates have been inadequate, Mr. Hildebrandt maintained. Loss development from the first year to ultimate settlement of the year's claims was 52% for indemnity for 1973, the figures show. Other states see a 2% to 3% loss development, Mr. Hildebrandt noted.

"You just can't settle a claim in Minnesota," underwriters have told the bureau's general manager. Minnesota allows a worker to reopen a case at any time. An underwriter, who believes a claim has been settled, may see the claimant in another three, six or 10 years charging the disability has increased from when the claim was originally settled.

The bureau is requesting the application of a trend factor to workers' compensation rates, although its first request last year was denied by the insurance commissioner. He said then that the concept needed "more study." Over 20 states now recognize the application of a trend factor to workers' compensation rates, Mr. Hildebrandt said.

He explained that in the past a trend factor was not needed in the workers' compensation line because outside forces acting on losses affected premiums to the same degree and it all balanced out.

But figures from recent years show "losses have been more affected than premiums," he said, creating the need for a trend factor. The forces at work, to name a few, are increased medical costs, inflation, unemployment and changing patterns of duration and frequency of benefit usage.

The steadily increasing loss ratios in this decade show that the increase in losses is exceeding the increase of premiums, Mr. Hildebrandt said. The application of a trend factor represents the projection of that imbalanced effect of these various forces on losses compared with premiums.

The bureau is requesting the new rates take effect Oct. 1, but public hearings won't be held until sometime in October.

The excess work comp market is also tough in Minnesota. Page 86.

The requested rate increases are 84.6% for manufacturing, 71.2% for contracting and 64.5% for all others.

If it's any consolation to employers, the rate increases requested could have averaged 85.6% if the underwriters had not agreed to reduce their general expense and loss adjustment expense loadings.

But the bureau is also requesting that rates on policies outstanding Oct. 1 be increased 22% for the outstanding portion of the policies.

Past experience suggests the pending rate increases will not be as large as those filed by the bureau. In 1975, the bureau requested a 12.8% increase in rates and got 11.7%. In 1976, the bureau filed for a 16.7% average rate increase and got 5.4%.

Smaller increases in rates than were requested in one year just requires larger rate increases be filed the next year, Mr. Hilde-

Continued on page 86

Escalator forces excess insurer out of work comp in Minnesota

MINNEAPOLIS—It's not just the primary market for workers' compensation in Minnesota that is showing dreaded symptoms of sickness with pending rate hikes and a growing assigned risk pool.

The excess market there isn't looking plump and rosy either with the pullout of Employers Reinsurance Corp. of Kansas City.

Employers Reinsurance cut off its underwriting of excess workers' compensation insurance for self-insurers in Minnesota early this year because of the state's automatic annual escalation of benefits tied to the state's average weekly wage.

When the underwriter withdrew, the legislature hadn't yet capped the annual escalation at 6%, but that move isn't enough to draw the company back to the Minnesota market, said vp John Pelot.

Last October the company projected the automatic escalator would turn a $208,000 claim from a 38-year-old widow who lives for 39 more years into a $1.2 million claim. The 6% cap brings that projection down to $790,000, which helps, Mr. Pelot conceded. But the 6% cap still permits the claim to develop to four times what it would cost without the annual escalator.

Mr. Pelot explained that an automatic escalator hurts the excess insurer more than the primary insurer. "The primary insurer retains maybe $25,000, $50,000 or $100,000 of the loss. Then all the rest falls on the reinsurer or excess carrier. It has quite a dramatic effect on the excess carrier," he said.

Employers Reinsurance had considered various alternatives to pulling out of the state—requiring much larger retentions, raising rates or excluding coverage for the escalated benefits—all of which were rejected as unworkable.

"Our only alternative was to retire from writing business in Minnesota and to get corporate business to pressure the legislature for no escalation or a special fund supported by a special tax or general revenues to pay for the escalated benefits," Mr. Pelot said.

James R. Otto, chief attorney of the Workers' Compensation Division of the Department of Labor and Industry, said other underwriters are filling the void left at 12 to 15 large corporations with the pullout of Employers Reinsurance. But they are filling the void —of at least $10 million of excess insurance as required by the state for self-insurers—in layers. A typical program is one underwriter with the first $1 million over $300,000, another underwriter with the next $4 million and a third underwriter taking the next $5 million.

"Large employers are not having too much difficulty (in the marketplace), but the smaller employers are finding it harder," Mr. Otto observed.

The excess market for self-insurers of workers' compensation in Minnesota is apparently restricted by the state's policy of approving only licensed carriers as excess insurers of self-insured programs.

Th regulators are "reflecting on whether we should or shouldn't" approve non-admitted carriers as excess insurers for self-insurers, but "we haven't really had too much request to do that," Mr. Otto said.

There's concern in Minnesota regarding the financial security of self-insured workers' compensation programs, Mr. Otto explained, because "workers' compensation claims are not a priority in bankruptcy."

But the excess market for self-insurers of workers' compensation in Minnesota is not a crisis situation, the attorney said. There are, however, "a lot of unhappy employers because the premiums are high." ■

Rate hike . . .

Continued from page 85

brandt suggested. Something has to give sometime, and if it's not the rates, it could be the market.

Les Baumer, vp at Employers of Wausau, said, "I hope the new (approved) rates are near what the indications call for. Real experts put those together.

"There has been a lot of red ink in the last few years. Underwriters need to see they are at least breaking even when they're pricing for the future. If you know there's a serious rate problem, you have to be more selective."

Selective is the word at Employers of Wausau in regards to Minnesota now. "On any renewals or new business, we know the rates are inadequate. We are being very selective on new business. We want larger accounts that we can put on a rating plan so if there is adverse loss experience, we can collect," Mr. Baumer said.

The vp suggested his company is waiting until October to see the new rates before aggressively changing its underwriting pattern in Minnesota. Still, Mr. Baumer said, "Right now Minnesota is pretty low on my list as an underwriter. I can't see breaking even."

Apparently other underwriters agree because the state's assigned risk pool has grown dramatically in the last year and a half. "Risks are coming in for no apparent reason," Mr. Hildebrandt said, pointing to "three or four risks in the $30,000 to $50,000 premium range."

And in July the pool took a risk with a deposit premium of $623,000. "If he can't buy insurance, we've got a problem," Mr. Hildebrandt observed.

In 1973, the assigned risk pool took 764 new assignments. In 1974 that edged up to 913 new assignments. In 1975 there was another increase to 1,078 and in 1976 new assignments almost tripled to 2,910.

Thus far in 1977 the pool has had 3,030 new assignments. "I make the statement—facetiously I hope—that I anticipate the assigned risk pool will be the largest insurer of workers' comp in Minnesota," Mr. Hildebrandt said. ■

Wyatt D&O study

Wyatt Co. said it doesn't plan to do its annual survey of large corporations on their experience with directors and officers (D&O) liability insurance. Wyatt has done an annual D&O study each year for the last three years. The pressure of risk management assignments forced the delay of the next D&O study until 1978.

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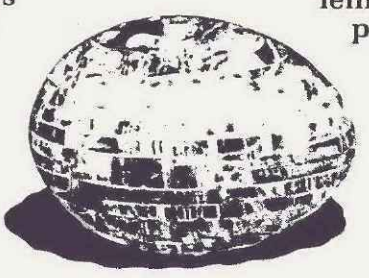

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In Illinois

Insurance problems face condo boards

CHICAGO—A package of reform bills passed by the Illinois legislature may create insurance problems for boards managing condominiums.

Recently passed legislation is designed to correct abuses that have occurred in the rush by developers in the Chicago area to convert apartment buildings to condominium ownership. One bill requires that board managers purchase comprehensive public liability insurance which includes the developer of the project as a named insured.

"This could be compared to requiring Ford car owners to include the Ford Motor Co. in their individual policies as an additional insured," said James L. Fuehrmeyer, vp and manager of the real estate division of Schwartz Brothers Insurance Agency here.

"In the event a suit is filed alleging a defect in the car as a cause of the accident, Ford would then be defended by the car owner's policy rather than by the manufacturer's policy," he added.

Mr. Fuehrmeyer speculated that the legislature mandated the developer be insured under the condominium management policy because it feared that developers might go out of business, leaving no one to pay claims.

Take the case of an elevator accident caused by faulty installation, Mr. Fuehrmeyer suggested. The developer who installed the elevator, not the manufacturer or the condominium board, would be liable. But there would be no one to pay damages if the developer had gone out of business.

The law does not include apartment houses, townhouses or co-op apartments where the same problem could occur, Mr. Fuehrmeyer said. Thus the law may be vulnerable to a court challenge on the grounds that it unfairly discriminates against condominiums.

Federal Insurance Co., INA and CNA are three of the largest companies providing these public liability policies.

The real estate insurance expert warned that an early decision is required on how to handle the insurance coverage. Both insurance companies and condominium boards could face legal problems in Illinois if a way to comply with the law is not found.

Insurance companies might decide to base the additional premium for covering the developer by calculating the cost of a developer's completed operations policy, he suggested. Or the company could treat the additional risk as a product liability exposure, he added.

Board managers of condominiums who are unaware of the new requirement could be personally liable if policies issued after Jan. 1 do not comply, Mr. Fuehrmeyer warns. The law appears to hold managers personally responsible for not obtaining the insurance. ■

Insurers report gains

NEW YORK—Insurance companies reported a net gain for the first six months of the year, although companies continued to lose money on underwriting.

The Insurance Information Institute said it estimated companies had underwriting losses of $176 million in the first six months of 1977. There was a statutory underwriting gain of $142.8 million which was wiped out by policyholder dividends of $319.2 million. The figures for the first six months of 1976 showed a statutory underwriting loss of $1.6 billion.

Investment income for the first six months totaled $2.7 billion. Earned premiums are estimated at $30.1 billion compared with $26.4 billion for the same period in 1976. ■

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New York proposal

Controversy erupts over alien firms

By REBECCA FANNIN

NEW YORK—A plan by the New York state insurance department to open the door to alien reinsurers has sparked controversy among licensed reinsurers, primary insurers and corporate buyers of insurance.

Those against the proposed change, mostly licensed reinsurers, said the ruling would bring unfair competition, would create financial insolvency problems and would only increase capacity by a small percentage.

The proposal would grant 100% credit for non-admitted reinsurance of alien exposures and would permit 85% credit for non-admitted reinsurance for U.S. risks.

"The present regulations have been unduly restrictive and have caused a crunch in the marketplace," said Edith Lichota, assistant treasurer of the Carborundum Company, who is also the representative of the Western New York chapter of the Risk & Insurance Management Society.

Ms. Lichota refuted charges that the insurance department couldn't adequately police the alien reinsurers. She listed the requirements for aliens under the proposal.

An alien reinsurer must deposit and maintain not less than $10 million in cash or readily marketable securities. Alien individuals who are unincorporated must maintain $100 million. If these standards aren't met, however, credit could be given on the basis of the collection record of the ceding company rather than on the payment record of the assuming company. The aliens, however, wouldn't be subject to financial examinations or submission of financial statements.

"In other words," Ms. Lichota said, "these security provisions are in lieu of being regulated and place the responsibility on the ceding insurer to make sure these regulations are met." She added that an "unstable insurer doesn't just deposit $10 million."

But Edward F. Rondpierre, vp of the General Reinsurance Corp. disagreed. He pointed out that the amount of the deposit isn't related to the alien's liabilities or credits. Ceding companies could claim credits of hundreds of millions of dollars for reinsurance recoverable from an alien insurer who maintains only a $10 million deposit," he added.

Mr. Rondpierre also expressed concern about credit being allowed on the collection of the ceding company rather than the alien's payment record, "credit could be taken under this subsection where the reinsurer is newly established and has no payment record and could even be taken where the reinsurer has a demonstrably bad payment record with ceding companies other than the one claiming credit," he said.

Associations representing licensed companies, particularly, oppose the ruling. "It's discriminatory for the department to demand the most from the licensed reinsurers demand less regulations for those companies who are farther away from the department," said Charles W. Havens III, president of the Reinsurance Assn. of America.

"It would be so easy for the unscrupulous reinsurer to take advantage since they wouldn't have to be examined or wouldn't have to submit an annual financial statement," Mr. Havens said.

"They say that the primary company won't go to an unstable alien but some companies aren't sophisticated and go to the wrong person," he added. He also noted that a new foreign government could take over and deny claims from reinsurers operating under the previous administration.

"When something like this happens," he said, "it gives everyone a black eye."

The reinsurance associations also object to the high cost of examinations that licensed reinsurers must withstand. Mr. Havens pointed to one reinsurer who spent $350,000 out of its own pocket for personnel tie-ups, computer usage and general complications.

Although those favoring the proposed change cite the resulting increased capacity, Mr. Havens said the proposal to liberalize credit would only increase capacity by 1.5%.

He supported his claim by noting that the surplus penalty to ceding companies who used non-admitted insurers was only $301 million in 1976. This compares to a total surplus of $24.6 billion for ceding companies, he said.

The additional surplus that ceding companies could claim under the proposal will "help a couple of companies" increase their capacity, Mr. Havens said, but it won't be to their advantage if the alien company becomes insolvent.

Although the shrillest cries about the proposed rule change are coming from licensed reinsurers, one primary insurance company is also against the change.

"To some degree this would increase capacity, but we don't want increased capacity at any price," said Joseph P. Decaminada, senior vp of the Atlantic Companies in New York.

"Our position is that let's change the regulations but let's keep solvency and capacity in the front seat instead of letting solvency take a back seat to capacity," Mr. Decaminada said. ■

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Hartford offers airbag discount

HARTFORD—The Hartford Insurance Group has joined the list of companies offering discounts to automobiles equipped with air bags or other passive restraint systems.

The Hartford announced that it will offer a 30% reduction on the personal injury and medical payments portion of personal auto policies for cars equipped with air bags.

The reduction will be implemented immediately in the 18 states with an open rating system, The Hartford said.

"It has been proven that the use of seat belts, both active and passive, can reduce injuries and save lives," said Hartford chairman Herbert P. Schoen.

States in which The Hartford can immediately implement the reduction without prior regulatory approval are California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Minnesota, Missouri, Montana, Nevada, New Mexico, Ohio, Oregon, Utah, Virginia, Wisconsin and Wyoming. ■

Bekins unit treads a narrow line without becoming a captive

By JOANNE GAMLIN

LOS ANGELES—"We are about as close to being a captive as you can get without being there," observed Alfred W. Dusebout, president of Adams/Clay Insurance Brokerage Co., a subsidiary of The Bekins Co.

Mr. Dusebout, 46, who is the man to whom Al Prevost, risk manager for the parent company reports, is referring to the fact that to him there is only a narrow demarcation line between his type of unit and a genuine captive agency.

He became head of the financially ailing subsidiary last year under a mandate to orchestrate a shakeup which resulted in the departure, voluntary and otherwise, of 13 Adams/Clay employes. Now firmly entrenched as president of the brokerage unit, which appears to be recovering, Mr. Dusebout has the final say regarding the entire Bekins corporate insurance program.

The $173.5 million, diversified moving and storage company has about $60 million in insured property values, underwritten by the Appalachian Insurance Co., a subsidiary of Allendale, he told *Business Insurance*. Liability coverage, including directors and officers (D&O) and errors and omissions (E&O), are carried by National Union Insurance, part of AIG.

Property coverage, he pointed out, is a minor part of the total Bekins insurance program. Out of total insurance premiums of approximately $3 million, only about $70,000 are for property insurance.

The more important casualty coverage has $200,000 self-insured retentions which could go higher, he said, if a real captive insurance company for the parent company does not materialize.

Workers' compensation at present is self-insured only in three states: California, Florida and Texas. However, Bill Kiane, who formerly was workers' compensation adjuster for Adams/Clay in Miami, joined the staff at headquarters early this summer to oversee and to possibly expand the self-insured workers' compensation program. He reports to Mr. Prevost.

Now three-and-a-half years old, Adams/Clay almost since its inception has acted as the broker for The Bekins Co.'s property/casualty insurance program. Looking to the future, the brokerage subsidiary is studying the notion of self-insuring the parent company's medical/dental/life coverages, according to Mr. Dusebout, who formerly headed the commercial mass marketing effort at Safeco Insurance Co., Seattle. Safeco has now phased out that program on a national basis.

To bring the idea of self-insuring Bekins' employe benefit program to life, another new employe, Bill Alberts, who was formerly self-employed selling group insurance in Arizona, was hired in early summer.

Observing that he is certain the new program will be in place by next January, Mr. Dusebout said he has recommended that an ASO or administrative services only contract be acquired.

The tall, earthy official's first love, nevertheless, is Adams/Clay which after six months of his stewardship appears to be steering into a profitable year.

"Adams/Clay is not a true brokerage house at all but a commercial mass marketer," Mr. Dusebout went on, "specializing in three insurance products." The products are:

- Physical damage, comprehensive and collision coverage on contract drivers' tractors. This program, named for merchandising reasons Truck Protection Insurance (TPI), is the group's fastest growing product.
- Movers and warehousemen's policies for transit and storage.

Continued on page 90

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Adams/Clay . . .

Continued from page 89

The insurance is purchased by an insured who is in transit or who is placing his goods in permanent storage and wants to buy protection which is over and above the released value provided by his van line.

• Employe relocation insurance (ERI). Under this program, Adams/Clay arranges insurance for corporations which are relocating a large number of workers. Like the second product, ERI, which is sold to client firms as a package, insures goods above the 60 cents per pound rate generally required to be covered by moving companies.

Truck protection insurance is Adams/Clay's top product. It has achieved this status, he believes, because his staff has been aggressive in nailing down long-haul truckers, a class of business which he said the traditional insurance industry has tended to shrug off.

"We know how to underwrite these birds," asserted the executive, noting that of the 100 employes at Adams/Clay eight are underwriters. He said that his group was recently successful in signing up a major competitor as a client for TPI insurance.

"Although it has about 1,500 contract or independent drivers, it had only approximately 200 of them under its program which is similar to TPI," he explained. "One of the reasons this company wanted Adams/Clay is that we promised to pursue the writing of the others with more spirit."

The team from the brokerage subsidiary seems to be making good on that commitment. Since May 1, when the coverage for the new client's contract drivers became effective, he said that one sales person—a woman—was able to sign up another 100 drivers and to extract commitments from an additional 150.

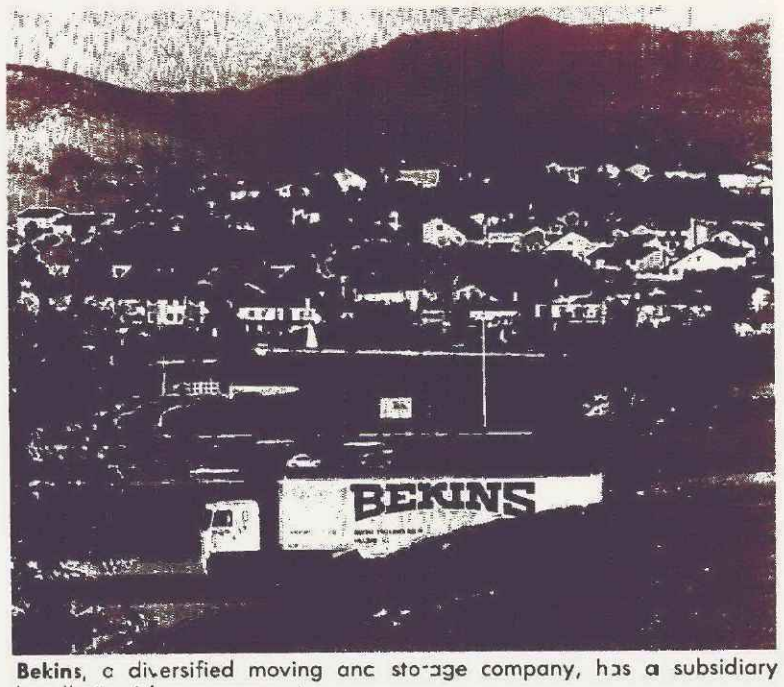
"If we get a quote out and if the people we question are sincere, we'll get the business."

Nevertheless, to make sure that the business from the new client will be around for a long time, he said that Adams/Clay is underwriting the program scrupulously, jettisoning those drivers who do not meet its standards.

The TPI coverage has been underwritten exclusively by Gulf Insurance, Dallas. Transport Indemnity, Los Angeles, which bills itself as a specialist, is a major underwriter for Adams/Clay.

Mr. Kiane, who is in charge of the parent company's self-insured workers' compensation program, is also being given an assignment from Adams/Clay. He is being asked to study the question of whether the subsidiary should offer a self-insured workers' compensation program to the outside market.

Contract truck drivers in this country are being looked at by Adams/Clay as a potential market for such a vehicle. Under scrutiny, according to Mr. Dusebout, is the formation of a general partnership in California to which contract drivers in the golden state could belong as limited partners.



Bekins, a diversified moving and storage company, has a subsidiary handle its risk management.

As a limited partner, the contract driver could purchase workers' compensation coverage for himself and his helpers, he said.

He predicted that should this idea materialize Adams/Clay will add something like 1,000 clients to its self-insured workers' compensation program by next January.

He went on to point out that one of the reasons for putting Bill Alberts, the new employe benefits specialist, on at his level on the payroll is the creation of new life-oriented products for moving/storage agents. Adams/Clay currently insures about 200 moving/storage agents for property or casualty exposures, he said.

"We think we could put together some buying power for those people that they could not get on their own. We think we could do some things for contract drivers and for agents in individual retirement accounts (IRA's), Keogh plans as well as in medical, dental and life insurance.

One reason why things may be looking brighter for Adams/Clay is that it expects its claims settling arm, Consumer Claims Agency or CCA, to make a profit this year. The unit, which had long been a part of The Bekins Co., was folded into Adams/Clay when the latter was formed.

CCA settled between 50,000 and 60,000 household goods claims a year, said Mr. Dusebout. Although most of these are for The Bekins Co., a growing number are from the outside market.

The claim settling arm works on the interesting principle that it is more profitable to repair a damaged household article than to hand out a check to the claimant.

A network of about 300 repair firms is utilized by CCA. It allots each a chunk of business sizable enough to act as an incentive for cost control.

"We may give a repair firm $100,000 a year and so he damned well better keep his costs down," asserted Mr. Dusebout, indicating that CCA ceaselessly strives to cut about 20% from the standard cost of a particular repair job.

Another reason things are looking up for Adams/Clay is that they were quite grim last year. The subsidiary lost $43,000 in 1976, disclosed Mr. Dusebout, noting that one reason it did is that he chose to write off an acquisition in two years rather than over a seven-year period.

"And I wrote off in excess of $140,000 which was not contemplated," he said. Had he not taken that action, he maintains Adams/Clay would have made a profit of over $100,000.

For 1977, he expects the unit to make over $100,000 in profit on commissions of approximately $1.2 million.

This 8% profit should blossom to a 35% to 40% figure by 1979, he believes, when the unit has matured.

"By 1980, if I cannot return 35% to 40% on gross revenues I am not doing a good job," he asserted.

Turning to the shakeup which he was hired to direct, Mr. Dusebout said he personally made many changes, some of them among top personnel. Under its previous administration, he said Adams/Clay was "permissive and fragmented."

If higher retentions or a captive lies in wait for The Bekins Co., next year, an acquisition partner for Adams/Clay is also likely, according to Mr. Dusebout.

But probably not until 1979. During that year Mr. Dusebout expects to spend a lot of time scouting a merger partner, which as of now could be either a traditional brokerage house or a specialty firm. ■

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License B-137

State-by-state listing

19 states require maternity benefits

CHICAGO—Nineteen states require that disability benefits be provided for pregnancy on the same basis as other short-term disabilities, according to a survey by Hewitt Associates.

The Deerfield, Ill., consulting firm found that nine states have a specific law requiring disability benefits for pregnancy. Ten states require benefits as a matter of policy without specific legislation.

Seven states follow guidelines handed down by the Equal Employment Opportunity Commission (EEOC) after last year's Supreme Court decision that companies do not have to provide disability pay to pregnant women. Two states also say that employers do not have to provide benefits, but these states do not follow the EEOC guidelines.

Three states require some benefits be provided. Seventeen states have no laws or policies on the subject and two states did not respond to the Hewitt survey.

State laws requiring specific benefits have been challenged in the courts on the grounds that the Employe Retirement Income Security Act's preemption of state laws prohibits benefit requirements.

Here is Hewitt's compilation of the disability pay requirements in the various states:

ALABAMA—No law. No policy.

ALASKA—No law. No policy.

ARIZONA—There is no law. The policy is that maternity benefits do not have to be the same as other disability benefits, pursuant to the U.S. Supreme Court ruling in the General Electric case. The policy is not in writing; the state is waiting for federal legislation.

ARKANSAS—No law. No policy.

CALIFORNIA—State has unemployment compensation disability law requiring maternity benefits for six weeks. Employers can substitute their own plan only if it is as good and, at least in one provision, better. Otherwise the state plan is compulsory.

COLORADO—No law. A major case is now pending to establish a Colorado state policy. The state policy currently is proceeding along the previous grounds (that maternity benefits must be same) until some legislation is passed. Cases are being accepted by the division of civil rights but plaintiffs are being warned of the U.S. Supreme Court ruling.

CONNECTICUT—A state law was adopted in 1973; employers must provide maternity benefits the same as any other disability according to the employer's individual plan. Cases are pending.

DELAWARE—No law. The policy follows EEOC guidelines on the U.S. Supreme Court's ruling in the G.E. case. According to the Delaware interpretation, job seniority and leaves of absences are unaffected by the ruling and Delaware is requiring employers to treat these the same in maternity cases as in any other disability. Benefits are not required to be the same.

FLORIDA—The law is not specific. The state policy is that maternity benefits must be treated the same as any other disability benefits. This is a recommendation of the human rights division, not the law. They are waiting to see if any court cases challenge the policy.

GEORGIA—No law. No policy.

HAWAII—No law. No policy.

IDAHO—No law. EEOC guidelines are inoperative according to Idaho interpretation of the U.S. Supreme Court ruling. Employers should follow the U.S. Supreme Court's ruling. This means leave, job seniority, and benefits in maternity cases do not have to be the same as for other disability cases. It is not a major issue in Idaho.

ILINOIS—The policy is that maternity benefits should be the same. The law is that leave and seniority must be the same. There are cases pending.

INDIANA—No policy. There is a civil rights law which prohibits sex discrimination, but cases since the U.S. Supreme Court ruling in

Continued on page 92

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Maternity benefits . . .

Continued from page 91

the G.E. case decision have not reached litigation. (They were settled out of court.) The human rights commission does not foresee establishing a statewide policy in the near future.

IOWA—The law is contained in the state's civil rights act and is not explicit. The policy is that maternity benefits must be the same as any other disability which an employer covers in his plan. The state considers that the U.S. Supreme Court ruling examines Title VII of the federal Civil Rights Act only and cases brought under other points of law must be individually decided. Iowa interprets the U.S. Supreme Court decision in the G.E. case as a statement that employers who do not provide the same benefits for maternity-related disability as for any other short-term disability do not discriminate on the basis of sex. A case is now pending challenging the Iowa state policy.

KANSAS—The law follows the EEOC guideline as interpreted by the state of Kansas. Accordingly, maternity benefits must be the same as any other disability benefits. The state differentiates between the U.S. Supreme Court ruling and other cases on the grounds that the state, unlike the EEOC, has the power to make the law.

KENTUCKY—The law was restated after the U.S. Supreme Court ruling. No benefits are required to be provided, but unpaid leave and seniority rights must be the same as for any other short-term disability in an employer's policy.

LOUISIANA — Information not available.

MAINE—The law is not specific. The policy is that maternity benefits must be the same. A case is now pending.

MARYLAND—The law is not specific. The policy is that employers must provide some maternity benefit even if it is only six weeks. No cases are pending.

MASSACHUSETTS — The law follows the U.S. Supreme Court's decision as interpreted by Massachusetts. The maternity statute provides eight weeks' leave. Employes have seniority rights. Employers are allowed to decide whether or not to give benefits.

MICHIGAN—The law is that maternity benefits must be the same as any other disability. The basis for this law is a Michigan court of appeals opinion in November 1976. The Michigan Supreme Court has directed the court of appeals to relook at this case in light of G.E. Cases are pending.

MINNESOTA—The law is not specific. The policy is that maternity benefits must be the same.

MISSISSIPPI—No law. No policy.

MISSOURI—The state is following the U.S. Supreme Court ruling with regard to benefits only. The facts of the cases must be the same as those in the General Electric case. Otherwise, the state policy is that maternity benefits must be the same as any other disability. In all cases, sick leave and seniority rights must be the same.

MONTANA—The law is that maternity disability must be the same as any other disability.

NEBRASKA—No law requiring employers to give any benefits. No policy. Cases are referred to the federal level since the federal courts disagree on the issues.

NEVADA—The law is very general. There is no specific policy with regard to maternity-related disability.

NEW HAMPSHIRE—The state law was established before the G.E. decision. Accordingly, employers with accrued sick leave benefits must apply them to maternity disability cases. The employe's job must be held six months after maternity leave begins. The state supreme court upheld the commission on human rights against an employer in a major case.

NEW JERSEY—The law is not specific. The policy is to accept cases as if the G.E. ruling had never happened. The policy is that maternity benefits must be the same as for any other disabilities.

NEW MEXICO—Information not available.

NEW YORK—Under the human rights law, maternity must be treated exactly the same as any other disability. The human rights law may or may not affect private employers; there are cases and further investigations pending. The state disability law, however, definitely affects private employers. It was amended Aug. 3 to make disability payments mandatory for pregnant women for up to eight weeks.

NORTH CAROLINA—The law is not specific. The policy is that maternity benefits must be the same as for any other disability.

NORTH DAKOTA—No law. No policy. Legislation has been proposed and defeated. At the moment, there is a study to investigate the need for providing for maternity benefits under the law.

OHIO—The law is following the Supreme Court decision as interpreted by Ohio. With regard to benefits, employers are not required to treat maternity the same as any other disability. Leave and seniority are unaffected by the Supreme Court decision and must be the same as for any other disability.

OKLAHOMA—The law is that maternity benefits must be the same as for any other disability.

OREGON—The law is that maternity benefits must be the same as for any other disability. A new law goes into effect October 1977. The law is really a restatement to cover the state's position since the Supreme Court decision.

PENNSYLVANIA—The law is that maternity benefits must be the same as for any other disability.

RHODE ISLAND—No law. No policy.

SOUTH CAROLINA—No law. No policy.

SOUTH DAKOTA—The law is based on two South Dakota supreme court decisions that the employer must provide some benefits, though not necessarily the same ones as for any other short-term disability.

TENNESSEE—No law. The state is awaiting Congress' new legislation. The policy has "reluctantly" followed the Supreme Court decision. As interpreted by Tennessee, this means that employers are not required to treat maternity cases in any way the same as other disability cases.

TEXAS—No law. No policy.

UTAH—No law. No policy.

VERMONT—The law is not specific. The state is following the U.S. Supreme Court's decision. As interpreted by Vermont, the decision only affects benefits. Job seniority and leave must be the same as any other disability written in an individual plan.

VIRGINIA—No law. No policy.

WASHINGTON—No law. The policy is that maternity benefits must be the same as any other short-term disability benefits. The state is awaiting a state supreme court decision on the issue.

WEST VIRGINIA—No law. No policy.

WISCONSIN—The law is not specific. The policy is that maternity benefits must be the same as those for any other disability.

WYOMING—No law. No policy. ■

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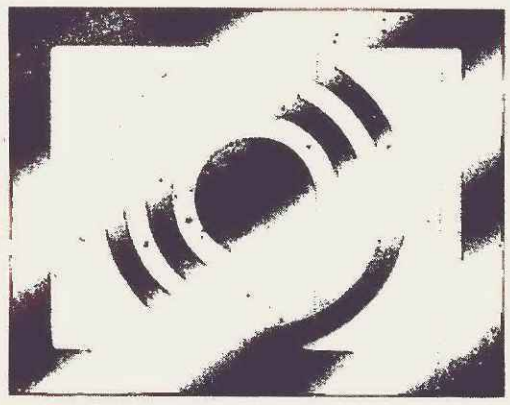

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Labor issues final ESOP regulations

WASHINGTON — Key changes involving loans highlight the final regulations on employe stock ownership plans (ESOPs) issued earlier this month.

An ESOP is a method in which a corporation finances a deferred compensation plan for its employes through the sale of corporate stock. The stock often is purchased by loans made to the company. The stock, then is used as collateral for the loan.

In contrast to earlier interim regulations that paid scant attention to the conditions in which loans are made to ESOPs, the final regulations provide some very detailed guidelines.

Of greatest significance is the IRS-Labor requirement that loans made "must be primarily for the benefit of the ESOP participants and their beneficiaries."

To satisfy this requirement, the interest rate on an ESOP must be at a level that plan assets cannot be drained off. The loan itself only can be used to acquire qualifying employer securities or to repay prior loans used to acquire stock.

To ensure loans are made that benefit the participants, the IRS and Labor Department have warned that all transactions involving ESOPs will be subject to "special scrutiny."

Of particular concern to the government is that fiduciaries of an ESOP might receive a loan that would benefit the company but have a deleterious effect on the ESOP. Such loans now, however, are clearly outlawed and a fiduciary could be held liable if a loan failed the "primary benefit requirement."

In the area of liability, the regulations provide that only an employer's securities acquired by the loan can be used as collateral. Thus, a creditor could not try to obtain an ESOP's other assets if a company could not repay a loan.

Similarly, in the event of a default on a loan, the value of assets to be transferred to satisfy the outstanding debt, cannot exceed the amount of the default.

Other key points include the elimination of an earlier requirement that only third party fiduciaries can oversee loan transactions. In addition, the regulations allow an ESOP to acquire employer securities that are subject to a "right of first refusal." ■

Medical directors meet in Toronto

TORONTO—The outlook for health care under the Carter Administration and the effect of national health insurance on the medical director will be two of the topics discussed at the annual meeting of the Assn. of Life Insurance Medical Directors of America.

The meeting is slated for Oct. ■

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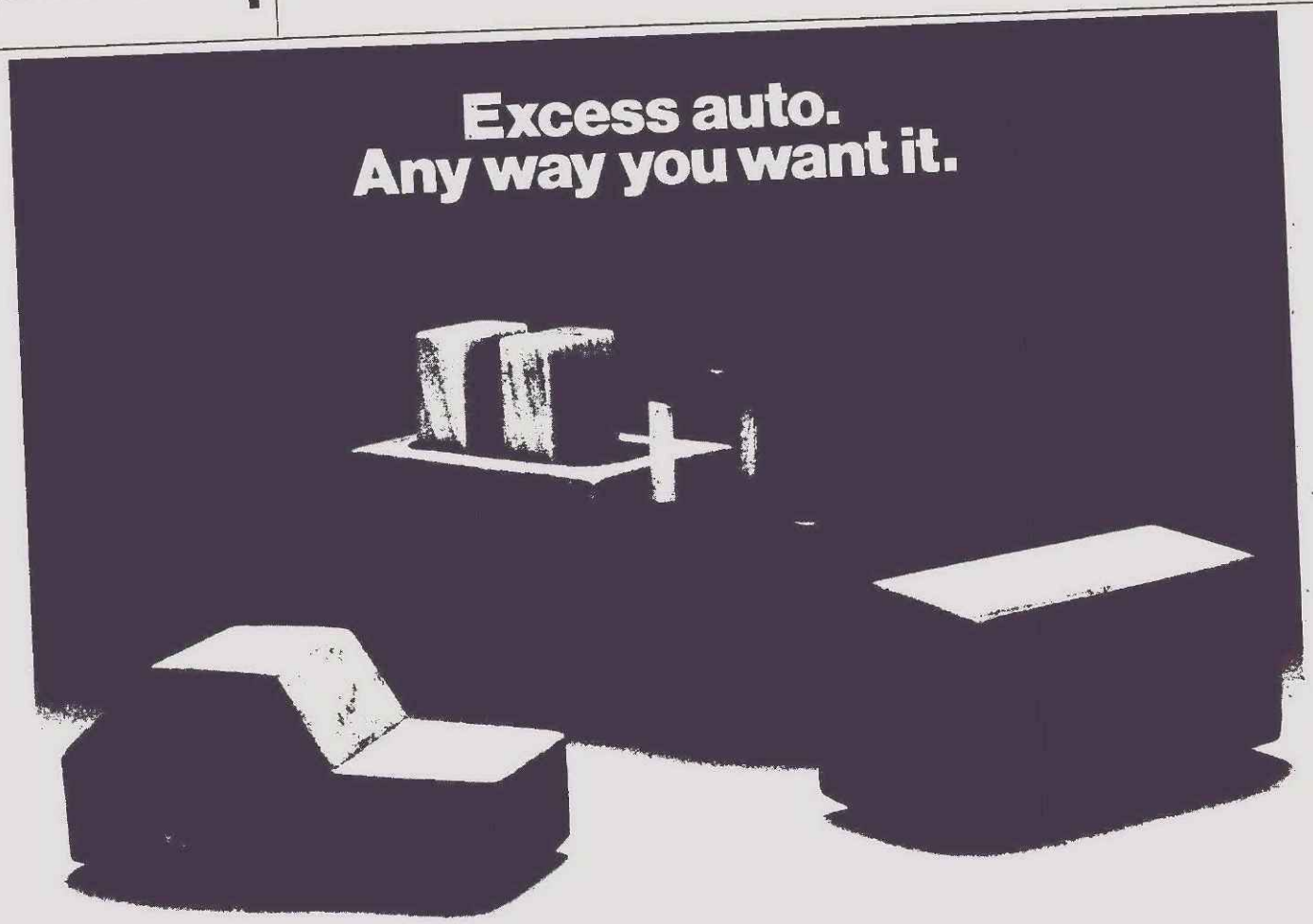

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letters

Continued from page 8

pull us toward the necessity of writing all-risk policies to assure universe coverage. Why? Because further simplification in the world of insurance would be synonymous with loophole. Loopholes, from both sides of the insurance buying/selling issue, have been reduced or at least identified over the last seven centuries by refining the language that some of today's instant experts (not referring to Mr. Lane) would now throw out.

The texts of today's standard policies probably are already briefer than they would be if the texts were required to be completely understandable by an eighth-grader as the National Assn. of Insurance Commissioners has reportedly proposed. Mr. Lane thus is correct that the insurance industry must correct this problem that insurance consumers are having, otherwise the regulators will be legislatively pushed into descending like a plague. A plague that could parallel the inflationary travesties of ERISA for casualty insurers and insureds.

Ray Lane's prophetic article may contain half of the answer to the policy readability dilemma, but I think the answer wasn't very recognizable. He noted that he resorted to an insurance dictionary to overcome the linguistics. The cost of placing an insurance dictionary in the hands of every insured might be prohibitive and likely they wouldn't be used, but the cost of expanding the definitions section of policy jackets could surely be tolerated. Presently, those policies that use boldface printing of subsequently defined words and phrases are much easier understood than those without bold-face emphases. The utopia of a policy whose jacket (ex-definitions) is understandable in and of itself is just that—utopia.

The second half of the answer to the policy readability dilemma likely is education. With consumer ed being added to the curriculum of many high schools, here is but one of several opportunities to start citizens out right in life as far as understanding all legal documents.

Insurance policies are logical; they make sense. And the closer to pure logic certain things become, the more we see certain peoples' emotions vacillate between frustration and anger when trying to cope. For instance, haven't most of us read through a policy and become at least a little bit ired when we read a black and white exclusion that we really wanted coverage on.

As for the NAIC's proposal on eighth-grade level policies: How many 13 year olds buy or sign their names to insurance policies? An insurance consumer with an eighth-grade education is not of the same mental makeup as an eighth-grader is.

Those of us involved in insurance dealings face the beginning of another great bureaucratic abyss if we don't take the initiative (as suggested by Mr. Lane) and help the average insurance buyer via the twin routes of better definitions and more education.

My opinions might have some nodding their heads—some shaking them. Both reactions are fine as long as you agree that a little more consumer oriented fine-tuning of the system is preferable to re-inventing the wheel.

John D. Jones

Asst. to vp finance, The McNally Pittsburg Mfg. Corp., Pittsburg, Kan.

Loss ratios

To the Editor I found it hard to believe several of the loss ratio figures in the "London Line" column (Aug. 8). The first said loss ratios were reduced from 13% to 5.9% and the second that said underwriting losses of $250 million and a loss ratio of 2.7%.

Who ever heard of such infinitesimal loss ratios! Can these figures possibly be correct—and if so, how we are being shafted!

I'm most interested in seeing what seems to be a little progress (?) in the area of tort reform. In this area I clipped out the small piece by Larry Bell "Broker finds himself deciding a fair award" and have referred it to the Ontario Legislature Committee dealing with automobile insurance in particular—their deliberations right now are in the area of no-fault.

I thought this article explained a very important principle very clearly and very simply, and I hope that the committee counsel will consider it worthwhile to pass it around to all the committee members.

D. M. Stuart

Insurance manager, Canada Packers Ltd., Toronto

The figures were, indeed, correct as printed.

Foundation

To the Editor: In your Aug. 22 issue there was an article about the International Fundation of Employe Benefits.

I am interested in obtaining more information from them, and would appreciate it if you could send me their address.

G. R. Sommermeyer

Director of employe benefits, Tecumseh Products Co., Tecumseh, Mich.

The International Foundation of Employe Benefits can be reached at P.O. Box 69, Brookfield, Wis. 53005. The phone number is 414-786-6700.

Issued in Canada

Broker investigates fraudulent policies

By ELLIS SIMON

NEW YORK—An international brokerage firm is trying to determine why its Edmonton, Canada, office manager issued spectators and promoters liability insurance certificates placed with Lloyd's of London to a motorsports insurance agency when no such insurance was in force with Lloyd's.

At least 15 such certificates were issued by Lowndes-Lambert of London and subsequently sold to clients of the International Racing Insurance Service (IRIS) of Spokane, Wash. IRIS clients involved in the transactions included promoters and operators of dragstrips, stock car, motorcycle, go-kart and skateboard tracks.

IRIS president Maynard Garrity said between May and August his firm had sold 15 of the Lowndes-Lambert/Lloyd's certificates, some of which had combined single limit coverage of up to $1 million.

Since receiving notification from Lowndes-Lambert in late August that the brokerage house wished to withdraw from the transactions, Mr. Garrity has placed coverage for his 15 clients with another carrier.

He declined to disclose the new carrier's identity for fear "unscrupulous brokers" would seek to interfere with this relationship. However, Mr. Garrity said premiums for the new policies will be no higher than for the coverage that supposedly was placed with Lloyd's and in some cases will actually be lower.

Although Mr. Garrity said he had been told by Lowndes-Lambert that John Devich, the Edmonton office manager, had no authority to issue the certificates, it was Mr. Garrity's previous understanding that this was not the case. "I don't know why (Lowndes-Lambert) is pulling out," he added.

Mr. Devich, who is on 30-day suspension from Lowndes-Lambert, could not be reached for comment.

Robert Gilroy, a New York attorney who is conducting the internal investigation for the brokerage house, said the certificates should never have been issued because there was never any insurance placed with Lloyd's. Lloyd's is not in the market for providing this type of coverage, he explained.

Mr. Gilroy said the number of such certificates issued probably exceeded 15 and he urged any company holding such a policy to get coverage through a different carrier.

He also urged affected firms to get in touch with him since one of the most difficult parts of the investigation is identifying exactly how many of these certificates were issued. Mr. Gilroy said he expects to have the investigation completed within two weeks.

Mr. Garrity was reported to be planning to take court action to compel Lowndes-Lambert to honor the certificates regardless of Mr. Devich's lack of authority to issue them.

However, Mr. Garrity said that he had no plans to begin legal action. ■

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Discovered loss to replace claims made

GATX to offer new professional liability policy

By KATHRYN McINTYRE ROBERTS

CHICAGO—GATX Insurance Co. president Thomas F. Sheehan says he has a better professional liability insurance form.

Better, that is, than the claims made form common today. He admits "it's not as good as the old occurrence form," but nobody can afford to write professional liability on that anymore."

Mr. Sheehan's brainstorm is called a discovered loss form and if it performs as its author believes it will, GATX will have business it can rate accurately and hassle-free relationships with its insureds.

The Chicago-based excess/surplus and specialty lines underwriter will use the form first for its comprehensive trustees and fudiciaries liability insurance policy for employe benefit plans beginning Oct. 1. Lawyers and accountants professional liability insurance will be written on the discovered loss form next.

Basically, a professional insured with GATX on its discovered loss form will be covered for liabilities first discovered during the policy year, regardless of when the negligent act was committed, the injury suffered or the claim filed, provided, of course, no other valid insurance covers the loss.

But "a loss first discovered" covers a lot of ground. Among the instances in which a loss is considered discovered on the trustees and fiduciaries policy is "when any insured learns of the existence of a wrongful or negligent act, error or omission, when the insured learns of the existence of a dispute with respect to benefits payable to any plan participant or his beneficiary, or when the insured learns of the violation of rights of others under any employe pension or employe benefit plan."

A catchall

There are more defined instances, but one serves as a catchall: "When any insured has knowledge of any matter which a reasonable person having sufficient facts, taken alone or by compelling inference, would cause him to believe a loss is discovered."

That will cover a lot of instances in which insureds may have previously waited for development of a suit. And that's what Mr. Sheehan wants.

"Our major disagreement with our insureds is that they know of the incidents—the only thing lacking is formal notification of the claims. But the insured says, 'I wasn't negligent,'" Mr. Sheehan explained, as a defense for not contacting the insurance company.

With this form, he said, "The policyholder doesn't have to decide if it (the situation) is a problem, he just needs to notify us to be covered."

That won't be a hardship for anyone, the insurance company president maintains. The insured will just keep an incident file and forward its contents to his broker.

Mr. Sheehan developed the discovered loss form because "none of us know where we stand with claims made."

Prior acts

Prior acts are the number one hurdle to claims made, Mr. Sheehan said. If the claimant was insured with another company when the act and injury occurred, then the insurer at the time of the act and injury is responsible for the claim. But "it gets muddy," Mr. Sheehan said, when the act occurred during another insurance policy period but the injury didn't occur until the current claims made policy period.

In addition, the courts have been unable to interpret the claims made policy to the underwriter's satisfaction. In court cases contesting an underwriter's decision not to pay a claim under the claims made form, the insurance company loses because the courts are still thinking "occurrence," Mr. Sheehan said.

To explain the problem with a claims made form, Mr. Sheehan offered the following scenario:

Professional services are performed during the policy year and they manifest themselves in injury during the policy year. But the injured person waits to file a claim. Meanwhile, the professional decides not to renew his coverage when he sees the deductible tripled and the premium doubled.

Eighteen months later he's sued. When he files a claim with the insurance company, the insurer turns him down because the claim was filed after the expiration of the policy.

But in court, the insurer is ordered to cover the claim because the act and injury occurred during the policy period and the insurance company was not hurt by a delay in the filing of the claim.

Expectations

Charging that the courts generally side with the insured, Mr. Sheehan pointed to the doctrine of reasonable expectations. That is, while the insurance company is standing on the contract, the court says the insured reasonably expected he would be covered for the loss.

"So we say you need new words to assume the risk of professionals that will incorporate and accommodate the problems—the time between service and manifestation of the damage is long, plus the delays seen in the filing of suit," Mr. Sheehan said.

"Discovered loss is better than claims made because it will cut down on disputes. The expectations are clear. It's an objective standard rather than subjective."

When asked if he expected any resistance to the new form, Mr. Sheehan said positively, "No, it's

Continued on page 96

Board slates 2 safety tests

CHAMPAIGN, Ill.—The 1978 examinations of the Board of Certified Safety Professionals will be held on May 20 and Sept. 30.

Applications to take the exam must be received by Jan. 3, 1978, for the May test and by June 1, 1978, for the September examination.

The May test will be the last single examination. Beginning with the Sept. 30 examination all applicants will be required to pass both a core exam and a specialty test. ■

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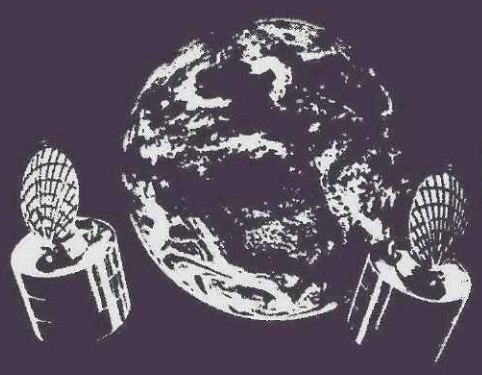

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GATX policy . . .

Continued from page 95

being welcomed because they feel claims made was forced on them and this is more reasonable."

The innovator has had a "number" of inquiries since he outlined the new policy form for lawyers at the annual American Bar Assn. meeting in Chicago last month.

Lawyers' professional liability insurance will be written on the discovered loss form after the first of the year, Mr. Sheehan said, followed by adoption of the form for accountants' coverage. "We'll watch development on these first," he said.

Prices will remain in line with coverage on a claims made form, he said, though he considers coverage under the discovered loss form to be broader.

GATX is introducing the form for its trustees and fiduciaries coverage for employe benefit plans because "its claims are so low and the line is so profitable," Mr. Sheehan continued. "We can get the bugs out when the problems aren't so severe."

But he isn't expecting many problems, mostly improvements. "It will give us more claims on our books, but no delay in knowledge. It will shorten the tail of inventory of undisclosed problems. We'll be able to rate more effectively," Mr. Sheehan said.

Better insureds

Since potential insureds who know they are facing claims wouldn't be interested in a discovered loss policy, Mr. Sheehan said, "this will upgrade the quality of applicants. It's for the highly selected, sophisticated and truthful policyholders. It cuts the charge for the less than candid applicant."

The silver grey haired president looked back on occurrence form policies for professional liability with an air of fondness: "It's been the best of both worlds. It was full retro cover plus accidents. But this is a vanishing species. It's been too difficult to price . . . for the insured and we can't buy reinsurance."

The Travelers Insurance Cos. are still writing lawyers' professional liability on the old occurrence form for the California Bar, but reportedly wants out of the program at the end of the five year agreement. The policy covers acts or omissions committed "during the policy period, and/or prior to the policy period if claim is made or suit is brought against the insured during the policy period and such insured at the effective date of the insurance did not know or could not have reasonably foreseen that such acts or omissions might be expected to be the basis of a claim or suit. . . ."

The CNA in Chicago still writes lawyers' professional liability insurance on an occurrence form for the Illinois and Arkansas State Bars, but the policy only covers errors, negligent omissions and negligent acts occurring during the policy period whenever a claim is made, thus excluding the full retro cover of the old style occurrence form.

Though boldly enthusiastic about the discovered loss form, Mr. Sheehan isn't predicting an industry-wide rush to adopt the form. "There will be no imitators in the short run because most underwriters would be unable to admit at this stage that their prior judgment to insure on claims made was not correct. It's too early for those who have so recently converted to claims made from occurrence to admit to policyholders and their own management that there are real problems attached to claims made."

As for discovered loss, only time —and you—can tell. ■

photo by Kathryn McIntyre-Roberts

GATX president Thomas F. Sheehan says his policy will upgrade the quality of his risks.

Auto thefts

The National Automobile Theft Bureau is planning a broad program to combat the spiraling number of auto thefts in the New York metropolitan area. The program will parallel the successful effort in Massachusetts that has reduced automobile thefts 10%.

. . . Here is the wording in new GATX policy

GATX will offer trustees and fiduciaries of employe benefit plans Liability cover on the discovered loss form Oct. 1 on an excess/surplus non-admitted carrier basis in over 40 states. It will also be offered through the Imperial Casualty and Indemnity Co. of Omaha, Neb., an admitted insurance company in 48 states.

It's expected Imperial Casualty and Indemnity will receive immediate approval to offer insurance on the discovered loss form in 30 states, while in the others it will take longer to secure approval of the form.

Following are the definitions of "discovered loss" and "discovered" as detailed in the GATX trustees and fiduciaries policy form:

For the purpose of this insurance, the words "discovered loss" shall mean:

a) a "loss" is first "discovered" at the earliest point in time by an "insured" based on the following criteria:

1) when any "insured" learns of the existence of a "wrongful act" or "negligent act, error or omission" of any "insured", or any person employed by an "insured" or by others for whom any "insured" is legally responsible;

2) when any "insured" learns of the existence of a dispute with respect to benefits payable to any plan participant or his beneficiary;

3) when any "insured" receives a demand for money or benefits, notice of filing of suit against any "insured" or any person employed by the "insured", notice of institution or actual institution of arbitration proceedings against any "insured" or any prson employed by any "insured", and notice of a dispute with respect to payment of professional fees to any "insured" or on behalf of any "insured";

4) when any "insured" learns of the existence of the violation of rights of others under any employe pension or employe benefit plan;

5) when notice of an assertion is received by an "insured" alleging a "wrongful act" or "negligent act, error or omission" of any "insured," or any person employed by an "insured", or by others for whom any "insured" is legally responsible for failure to provide benefits to a plan participant or beneficiary of the plan;

6) when any "insured" has knowledge of any matter which a reasonable person having sufficient facts, taken alone or by compelling inference, would cause him to believe that a "loss" is "discovered";

7) when any "insured" shall have given written notice of an assertion of a specific "wrongful act" or specific "negligent act, error or omission" to the company as provided in the policy for "loss" which is first "discovered" during the "policy period";

based upon services which were rendered or failed to be rendered by an "insured" or where an "insured" is legally liable for the performance by others of any such services.

For the purpose of this insurance the word "discovered" shall have the meaning of any of the following: a) was the first to find out, b) found out, c) learned the existence of, d) realized, e) revealed to, or f) disclosed, but in any case, the earliest point in time where there is knowledge to any "insured" shall govern as to the time of discovery. The "loss" must be "discovered" not merely discoverable. ■

Kirbo may head Carter's retirement commission

Crain News Service

WASHINGTON — Charles Kirbo, the Atlanta attorney who is one of President Carter's closest friends and confidants, "might very well be" named to direct the yet-to-be-formed presidential commission on retirement.

The appointment of someone with such a close personal tie to the President would be an indication of the chief executive's intense interest in U.S. retirement problems. "It's a very important thing to him," Mr. Kirbo said. The President thinks it is "an important area that ought to be studied."

Mr. Kirbo said his understanding was that the commission would look at both the public and private pension systems, leaving aside military retirement for the time being, which he said is a "special case."

Last June, the President announced that he would appoint a "presidential-level" commission to examine inequities in retirement benefits, the financial soundness of private and public pension systems and the future impact of pension plans on the nation's economy.

Formation of the commission has stalled pending a top-level decision on its scope.

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Group captive . . .

Continued from page 1

with huge bills for coverage that left gaps unfilled between the primary and excess policies.

This is the first known attempt by a group of companies not affiliated in a trade association or the same industry to organize a captive insurer. Even the Hopewell and United pools managed by ARM consist of captives established and managed by ARM, and hence they have at least a loose affiliation. Like Hopewell and United, the new captive would probably reinsure risks underwritten by the captive insurance companies belonging to each of the owner-members.

'A tough market'

It's a matter of some debate whether risk managers for some of the nation's largest corporations have ever actually failed to obtain the layers of coverage they needed to fill the gaps. Mr. Lalley said he hasn't heard of anybody unable to buy coverage, noting that the buffer layers have been available but at a price higher than most companies wanted to pay.

Thomas A. Duffield, vp of insurance and risk management for Archer Daniels Midland Co., however, says he knows of cases where risk managers haven't been able to obtain the coverage they needed at any price.

This move to set up a group captive owned by unaffiliated companies "is a response to the capacity shortage, in an area where the crunch has been felt by a lot of people," he added. "It's been a very tough market for these layers."

A major question at the outset was whether companies not in a single industry could successfully pool their risks in a group captive of limited size. "We decided we could do it," said Howard T. Weber, director of insurance for 3M Co. "This is no different from OIL (for the petroleum industry), except that we would not be in a single industry."

There is even a possibility that such group-owned insurance companies could replace wholly owned captive insurance subsidiaries used by their parent corporations to underwrite risks.

An alternative

If the recent IRS ruling is upheld, Mr. Weber foresees that captives existing solely to underwrite parent company risks would become unfeasible. "The group-owned insurance company might actually replace the captives now being used for the placement of insurance. If the IRS position is sustained, the group-owned insurance company might become the alternative, the legally acceptable method of accomplishing the ends instead of using captives," Mr. Weber believes.

Nearly all of the 65 companies involved in considering this plan are very large, with sales over $1 billion a year. The group initially establishing the captive is being limited to 25 because "that's manageable," said Mr. Lalley. If more than 25 companies request participation, Mr. Lalley suggested it would be logical to form another group.

More than one company per industry would be allowed to join the Bermuda captive, although there is a risk of destroying the heterogeneity of spread within the captive, resulting in too much concentration of risk in one particular field.

Millions in premiums

The executive committee of the group of 65 has retained counsel in Bermuda and has received word that this project is viewed favorably in that captive haven, as long as it is adequately financed. Mr. Lalley forecasts initial capitalization of such a group-owned insurer at about $2 million to $3 million.

Premium flow could approximate between $2 million and $5 million at the inception of the program, Mr. Lalley estimated roughly. Mr. Weber, however, felt premiums would have to equal at least 5% to 10% of the limits insured.

The potential savings on the purchase of excess buffer layers for those participating in this group captive could run 15% a year over a period of five years, some believe.

Mr. Lalley said the idea of a group-owned captive established by non-affiliated companies grew out of a discussion two years ago at an American Management Assn. insurance planning council meeting. A committee was formed shortly thereafter and the idea was presented last fall to the membership of CICA, with the initial study undertaken in April.

William S. Mortimer, an independent consultant based in California, coordinated the study.

Kraft Inc. "would not need" to buy coverage through the group-owned company, Mr. Lalley said of the part-owner and substantial policyholder in Ideal Mutual.

But, he said, "Ideal Mutual might need to buy buffer layer coverage in the next few years," and therefore might choose to participate initially in the company. He reiterated, though, that "Kraft has no problem in this (buffer layer) area."

No one knows for sure who will manage the captive in Bermuda. There will almost surely be a board of directors consisting of owner-members. But it looks as if the large U.S. based insurance brokerage firms which have captive management divisions—Marsh & McLennan, Frank B. Hall, Johnson & Higgins, Fred S. James, Corroon & Black, etc.—aren't in the running.

More likely to land the account is an independent captive management firm in Bermuda without brokerage connections. Only AIG's captive management division, Bermuda Fire & Marine, and American Risk Management's Bermuda operation appear at first glance to be available.

The large brokerage firms apparently won't qualify to manage the group-owned captive account because of the chance of conflict in the event an owner-member would have occasion to criticize the captive manager, possibly creating ill will if that same brokerage firm happens to handle another significant piece of the owner-member's insurance program. ■

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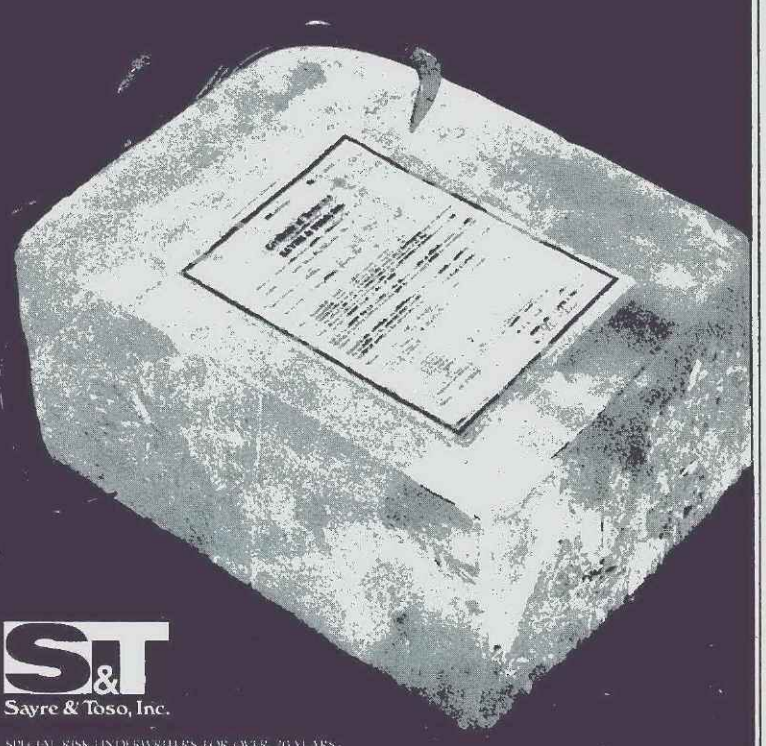

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SPECIAL RISK UNDERWRITERS FOR OVER 70 YEARS

Ideal now works with 35 firms

NEW YORK—Ideal Mutual Insurance Co. is now underwriting casualty risks for 35 large corporations, which should generate a net written premiums this year of about $20 million, said Edward P. Lalley, president and CEO.

Nearly all of this coverage is on a primary basis, he said, with only six of the programs reinsured into captive insurance companies. Ideal Mutual provides a maximum of $2 million limits.

The highest premium any one of the 35 large accounts pays is $5 million while the lowest premium is probably about $500,000, he said.

Ideal Mutual is no longer aggressively seeking outside commercial business, since "we're bumping up against our surplus now," said Mr. Lalley. Although Ideal's surplus should increase a bit next year, making some added capacity available, he doesn't expect that Ideal will be out seeking business even next year because the growth in the 35 clients' risks will necessitate more coverage being written. ■

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REED SHAW STENHOUSE
INTERNATIONAL INSURANCE BROKERS

California bill . . .

Continued from page 1

employed by a single employer for more than five years, liability for cumulative trauma is extended to the full period of employment and to all the carriers in that time span.

Estimates vary on what the measure will cost employers, public and private But at least one large steel making operation calculates that the law will cost it about $500,000 for the year 1978-79. An insurance spokesman noted that the workers have been filing increasing claims for such respiratory diseases as emphysema, asbestosis and silicosis. He said that his company, which has been reported to be considering closing down its Southern California facility where most of these claims are being made, has mounted an earnest effort to clean up the offending plants.

At the other extreme, Litton Industries, Beverly Hills, will not experience any cost impact from the bill, according to Jim Reichgelt, manager of self-insurance for the corporation. The bill will not affect Litton, he said, because the company paid its workers' compensation and cumulative trauma claims in California under a retrospective premium agreement.

"The bill's most severe impact will be on entities that have gone recently self-insured in workers' compensation," he continued. "And it will hurt them most during the next few years."

Mr. Reichgelt said that Litton had been approached by the California Self-Insurance Assn. in Sacramento to help in the fight against the measure, but had said "no."

"I believe in efficient business operation and this bill will put the cost of cumulative trauma claims where the workers' compensation insurance industry can get the needed rates and premiums," he explained.

A disappointment

However, Litton may be the exception. Most other corporations and public entities, including some small cities, indicated that either through the association or their own offices they lobbied fiercely against AB 155 and SB 555, a measure sponsored by the state fund.

"The governor was overwhelmed by the positions taken by the insurance commissioner, the state compensation fund and by Don Vial, director of the department of industrial relations," Joe Markey, lobbyist for the California Self-Insurance Assn., said.

He characterized the signing of the bill as a "bitter pill" to the members of his group.

Donald Reedy, director of contractual relations for the giant Los Angeles School District, estimates that the bill could cost the district as much as $1 million a year. He said that pressure from the workers' compensation insurance industry was the prod that caused Gov. Brown to first support and then to sign the bill.

"Unless the bill can be made to be declared unconstitutional or we can get reimbursement . . . the measure stands as a disaster for the school district," he said.

A challenge?

Mr. Reedy went on to say that there is talk that AB 155 will be challenged in the courts as unconstitutional on the grounds that it modifies a contract between the employer and the insurer.

The district is just now entering its second year of self-insuring its workers' compensation program. If it weren't for the new costs imposed by the bill, the district would be grinning ear to ear about the success of the self-insurance program, Mr. Reddy said.

"For example, we went from 60% of our lost-time claims being litigated to about 15% under the program," he said, adding that if this low rate prevails, the potential impact of AB 155 will be greatly reduced.

Los Angeles County, which has been self-insured for workers' compensation for eight years, still expects to experience a big cost boost under the new law, said Bill McClure, chief of workers' compensation claims/rehabilitation division.

Indeed, "catastrophic" is the word that he used to describe his reaction.

On the basis of what its former workers' compensation insurer, the state fund, paid for claims resolved during 1976 to 1977. Mr. McClure told *Business Insurance* that he estimates the cost impact of AB 155 will be about $3 million for the county for the year 1978-1979.

"Now in relation to the county's budget of about $3 billion, this is no great sum," he acknowledged. "But it does represent money that we don't have to spend elsewhere."

Tax hikes

He calculates that as a result of AB 155 the county may have to boost taxes by 1.5 cents for every $100 of assessed valuation.

"The governor doesn't give a damn about the local taxpayer," asserted Robert G. Walters, risk manager for the city of San Diego.

Outside of Litton and perhaps a few other unaffected companies, most corporations with self-insured workers' compensation programs were upset by the law.

"We feel it discriminates against the companies that are self-insured," said the insurance director for a Northern California manufacturer, noting that his company actively opposed AB 155.

"Pressure from the insurance industry is the only reason it passed," he charged.

Lockheed Corp. is affected by the law, according to Jack Bush, manager of financial staff. Although he had no cost estimates, he predicted that the law will produce "a big bill" for the aerospace corporation.

Lockheed's California division has been self-insured for workers' compensation for only about six months.

Other reactions

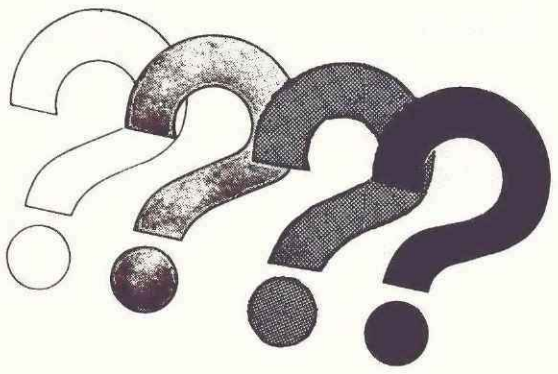
Mr. Bush said that he was particularly disappointed that the bill provided no definition of what constitutes cumulative trauma.

The workers' compensation claims manager for a giant utility said that he is reasonably confident that the law will be challenged in court as unconstitutional. If this happens, he said it probably won't have any impact at all for several years.

Foremost-McKesson Inc., San Francisco, had no cost estimates on the impact of AB 155, but Garrett Schold, nisk manager, said it could be severe.

Mr. Schold went on to predict that there will be other ramifications of the law besides cost hikes. For one thing, he forecast that preemployment physicals will become extremely comprehensive, with any job candidate who appears likely to file a cumulative trauma claim in the future passed over for employment.

It was fear of this effect of the law on older workers that caused the California AFL-CIO to join in opposition to AB 155 and SB 555. A number of public and private insurance executives said they agree that among workers, those over age 45 are most likely to feel the effect of AB 155. ■



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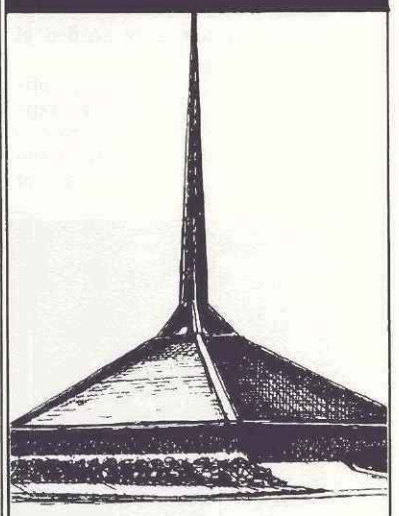

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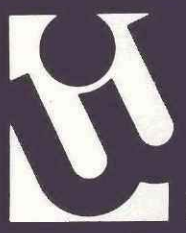

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  You Be The Judge: I—Herb Zeltner, President, Herbert Zeltner Marketing & Communications.
- Overview: Outstanding Communications Programs—Susan E. Forster, Manager, Welfare Plans, Mead Corp.; Joseph W. Duva, Director, Employe Benefits and Compensation, SCM Corp.; Judith Starkey, Personnel Specialist, Chemetron Corp.; and Dennis A. Kairis, Director, Employe Benefits, Borden Inc.
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IRS ruling . . .

Continued from page 1

cally with situations not addressed in the recent ruling.

The ruling deals with these three situations, she said, because that's how the question was posed to the IRS. Federal law prohibits disclosure of who requested the ruling.

The IRS staff member explained the ruling is predicated on the concept that an arrangement with a wholly owned insurance subsidiary cannot be insurance because there is no shifting of the risk outside the economic family.

"The parent and its subsidiaries pay for the loss. It's all one income family," she said. In essence, the IRS is saying it considers a wholly owned insurance subsidiary as just setting up reserves for self-insurance, she agreed.

But when the wholly owned captive also insures risks other than those of the parent and its subsidiaries, it "might" be beyond the scope of this ruling, she acknowledged.

Marianne Burge, partner at Price Waterhouse & Co. in New York, also questions whether the specificity of the ruling was intended to exclude other arrangements from its purview. Even further, she questions the theory of the economic family.

"The theory stands for the concept that because the U.S. parent is the ultimate beneficiary of the profits—or losses—of its subsidiaries, there should be no recognition of transactions between the affiliates.

Controversial point

"This is a controversial position for the IRS to take because the normal rule is that transactions between unrelated entities are recognized as such and payments are deductible as long as the transactions are conducted on arms length terms. This is specifically provided in the Internal Revenue Code, Section 482," she explained.

An insurance subsidiary can be an independent company worthy of that recognition, both Ms. Burge and Colorado's Mr. Barnes asserted. Ms. Burge said she believes premiums paid to a captive should be deductible as business expenses "if it's a bona fide operation, capitalized adequately and operated as an insurance company under the law of the jurisdiction in which it is incorporated.

"Bermuda is quite serious about setting up an insurance company there. They want it properly run. They expect reserves to be established, loss control measurers adopted and for the business to be conducted prudently.

"And Bermuda has proposed insurance regulation to be debated in its Parliament this fall.

"Bermuda treats it as an insurance company," she observed, but the IRS says it is not.

Colorado's insurance commissioner is convinced that captives incorporated in his state, now numbering 22, are entitled to the tax benefit. "Colorado law was specifically designed to meet the IRS objections to offshore captives," he said.

Colorado situation

He conceded the law doesn't meet the IRS's objection to the economic family "as well as we'd like it to," but argued captives in his state are "separately regulated and controlled—they're wayward sons.

"Colorado captives are formed for a bona fide business purpose. Transactions must be at arms length. Prior approval of policy forms and rates is required. They are regulated and controlled the same as licensed insurers and we don't permit thin capitalization like offshores," he explained.

As one who has written and spoken on captives for many years and whose firm is the auditor of many captive companies, Ms. Burge charged the ruling is "weakened by the fact there is little factual information given about the specific situations and no differentiation is suggested between a genuine, adequately capitalized business operation versus a paper company."

She questioned whether the ruling distinguishes between a captive that has been in existence for many years, with substantial assets, and a newly created company by merely identifying the captive addressed in the ruling as "newly organized."

And she speculated on the issue of the excise tax levied on insurance placed for U.S. risks with a foreign insurer, 4% of direct business and 1% on indirect. "If the ruling applies and it is not a premium, do we get a refund of the excise tax?" she mused.

Ms. Burge characterized the ruling as "technically not well founded. It's not a sound analysis of the tax law. It's controversial and open to challenge and there are two cases involving similar issues pending in the tax courts."

Two cases

Those are the Ford Motor Co. and Carnation Co. suits against the IRS for disallowing deductions as business expenses premiums paid by their subsidiaries to their respective captives. In Ford's case the payments were made by foreign subsidiaries and in Carnation's case the payments were made by U.S. subsidiaries.

Ms. Burge added, "I would have been surprised if the ruling had been reasoned and supported. We've all been studying this for a long time and we've been looking at the same body of case law. It would have surprised me if the IRS had come up with something we had all missed."

Though this is the first official IRS ruling on captives, everyone agrees it's the same position IRS has taken in the past in instructions to its agents and particularly in its still-continuing court battles with Ford and Carnation.

But there's no such agreement on the ruling's impact on captive operations.

"This ruling will destroy captives if it's upheld in court," tax lawyer John Nolan said. "But I don't think the courts will uphold."

Mr. Nolan, who is representing Ford in its challenge of the IRS, said they are still negotiating a settlement. "The ruling won't prevent a settlement in our case, but it makes other settlements unlikely," he said.

The Ford case is scheduled for trial in early October, Mr. Nolan continued. If the Ford case doesn't go to trial, the Carnation case will force the tax court to resolve the issue, Mr. Nolan predicted.

He suggested, however, it will be another two or three years before the controversy is resolved.

In the meantime, he said, "companies with captives already will probably continue to take the deduction, but this ruling will scare companies off from forming new captives."

Ms. Burge at Price Waterhouse said, "I don't think it will have a great effect on companies already in existence," since the decision has been made that a captive is needed. "And I assume they have already been audited on this.

New captives

"But for companies considering it, the tax executives must obviously take the published position of the IRS into consideration," Ms. Burge concluded.

Howard Weber, director of insurance at 3M Co. in Minneapolis, said, "We'd rather have premiums paid to the captive deductible, but if they are not, it won't kill us.

"Deductibility isn't the issue. It's 'What is the character of the payment to the captive?' " he said.

The IRS said in its ruling that the payments of "so-called 'insurance' premiums" made by the domestic subsidiaries are viewed as constructive dividends from the subsidiaries to their parent, to the extent there are profits, and then as a contribution of capital by the parent to the captive.

When the captive pays its parent or the parent's domestic subsidiary for a loss retained by the captive, the proceeds are viewed, again to the extent there are available earnings and profits, as constructive dividends.

Emphasizing that he is not a tax lawyer and "only speculating as to the effects this ruling will have on our own insurance companies," Mr. Weber said, "the treatment of that dividend has me confused.

"How do you make dividend payments out of capital funds? The only money paid to the captive is capital. In the extreme, this could create a tax disadvantage."

Mr. Pine, of Trubin Sillcocks, offered, "If capital is paid to the captive and it makes no money, there will be no dividend. But if the captive makes money—such as through investment or other income—the payment of so-called losses will, to the extent of such earnings, be considered constructive dividends."

The dividends "may or may not be taxable depending on the circumstances," Mr. Pine said.

Mr. Weber is most concerned

Continued on page 101

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IRS ruling . . .

Continued from page 100
with the Financial Accounting Standards Board (FASB) response to this IRS ruling. "If the courts uphold IRS, what will FASB do with it?" he asked. "Will they say you have to keep your books in accordance with tax law?

The FASB

"If FASB goes along with the IRS that a captive is not an insurance company—and I'm only speculating now—the worst FASB will say is the transfer to a captive is a capital contribution. Then, instead of showing income as premiums and reserves, you're sitting there with funds in a capital account. The captive no longer serves any useful purpose."

In these circumstances, Mr. Weber said, "a group owned captive concept, if it stands the test, is the only alternative. But a lot of work has to be done."

Warren Brockmeier of the Chicago-based Wyatt Co. agrees "there will be a large thrust to multiple ownership of captives in view of this ruling." He also predicted the ruling "will be cause for people to hesitate on forming new captives—because you're losing the tax advantage you thought you had."

Other reasons

But the Chicago consultant is also of the contingent that holds "it won't be the end of captives. We said a long time ago captives should be formed for sound insurance reasons."

Though "the marginal advantage of deducting premiums is eliminated, if it's a question of availability of insurance or the advantage of the reinsurance market over the excess market, you may still want a captive," he said.

Existing captives, Mr. Brockmeier predicted, "will take in more outside business and argue the ruling doesn't apply to them. And some will phase out captives in favor of alternatives such as conventional insurance programs, retro plans and plain old self-insurance. But a number will remain in business."

Charles L. Ruoff, vp at Fred S. James & Co. Inc. in New York, however, says the ruling "won't expand or retrench the activity of captives." In discussing the ruling, he stressed he is not a tax expert.

Other benefits

"We have de-emphasized that someone should get into a captive for tax reasons," Mr. Ruoff said. "I see in captives benefits in insurance, economics and management, objectives that companies couldn't otherwise achieve. These outweigh any tax advantages, but sometimes they can't be measured in dollars and cents."

As a broker involved in captives for a number of years, Mr. Ruoff said he was interested that the IRS examples in its ruling clear up previous speculation that the IRS would treat differently insurance placed directly with a captive than insurance reinsured in the captive. It won't, as its second and third situations illustrate. ■

Firestone appeals $3 million award

Crain News Service

AKRON—Firestone Tire & Rubber Co. said it will "most definitely" appeal a San Francisco jury's $3 million-plus award against the company as a result of a tire accident which killed a young girl and injured her family.

The $3,019,000 judgment was awarded Aydogan Akinci, 49, his wife and two sons. The family charged in their civil court suit that the one-car crash was caused by a defective Firestone tire.

In the five-week trial, James C. Downing, attorney for the Akincis, said their stationwagon swerved out of control on an interstate highway July 16, 1973, after a left rear tire blew out. The vehicle crashed into a median and rolled over, killing Ayse Akinci, 9.

Downing argued that a manufacturing defect left the bias-belted tire weak at one spot where the bias belts had been spliced at the same point.

But Firestone claimed in the trial that it was not its Deluxe Champion Superbelt that caused the accident, but a defective lower suspension control arm manufactured by Ford Motor Co. Ford responded by joining the Akincis in their claim that the crash was the result of a defective tire.

The jury, after three days of deliberation, found Ford blameless for the crash Firestone said it is self-insured for product liability. ■

Agency can't find safety chief

CHICAGO—The Regional Transportation Authority here says it can't find a qualified safety director for the $25,000 to $26,000 job it has open.

They want someone to develop and administer a safety program for bus and rail transportation systems in the six-county Chicago area. Candidates for the position should have a broad range of experience in transportation safety and engineering, including mechanical, electrical and civil engineering.

A spokesman for the RTA said filling the job is a "high priority." However, only "four to six" persons have been interviewed so far and the spokesman could not say where the position has been advertised.

The National Transportation Safety Board recommended in January 1976—after a commuter train crash that killed one and injured more than 300—that the RTA take a more effective role in safety of commuter transportation in the region. In February, two Chicago Transit Authority elevated trains crashed killing 11 persons.

The Chicago Tribune reported that 56 persons have died in rail and rapid transit crashes in the Chicago area in the last five years, a figure the RTA neither confirmed nor denied, saying only that 12 persons have died in the last two years.

Persons interested in the safety director position with the RTA may write Leo J. Cusick, Chief Operating Officer, Regional Transportation Authority, 300 N. State St., Chicago Ill. 60610. ■

People column . . .

Continued from page 102
surance programs for Chicago-based United Airlines, administering a department of 50 benefits people and reporting to Don H. Hansen, director of corporate insurance. Mr. Foos was formerly manager of personnel management for United's group finance and planning division. He has been with United for over 17 years, spending much of that time in the personnel management area. He replaces **David Walker,** who left the company in early August after being director of group insurance and employe benefits for slightly less than two years.

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Warnings are issued on bogus certificates

LONDON—Warnings to be on the alert against bogus certificates are being issued by shipping insurers in London after the discovery that some crews may be holding fake documents issued by a forgery crime syndicate in Hong Kong.

They have reminded shipowners that a condition of marine coverage is that the vessel has a competent master and crew and that any bid to deceive underwriters by the use of false documentation could put the insurance in peril.

"It is the owner's responsibility to employ the correct crew, but before a policy can be declared void it would have to be proved that he knew their papers were improperly held," a marine underwriter in London advised.

The scare over potential insurance defects arose after Liberian maritime authorities in New York tipped off the Hong Kong government that they had found nearly 100 cases of bogus documents among seamen applying to man ships under their control.

Efforts to trace further unauthorized certificates are being made in various ports' with the result that more than 70 other batches of forgeries have been found in Britain, Canada, Australia, New Zealand, India and Singapore.

Police in Hong Kong are now trying to trace the source of the documents but the problem of checking competency papers for crews may be raised by the Inter-Governmental Maritime Consultative Organization (IMCO) at its meetings early next year. ■

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people

Pearce joins SF company; Borg-Warner taps Thomsen

Alan Pearce, 28, has been named risk manager for Foremost-McKesson Inc. in San Francisco. He replaced **Garrett Sthold,** who was named assistant treasurer in charge of corporate finance. Mr. Pearce reports to treasurer John Boyce-Smith. He was formerly risk manager for American Independent Oil Co. and Aminoil U.S.A., two subsidiaries of R. J. Reynolds Industries Inc. Mr. Pearce had been with Burmah Oil in Houston when it was acquired by American Independent.

* * *

Sven Thomsen, 45, has been named director of risk management at Borg-Warner Corp. in Chicago. Mr. Thomsen will be responsible for risk management and loss prevention at the worldwide manufacturing and financial services company. He was formerly manager of the insurance department for the Tribune Co. and previously worked for Travenol Laboratories. He replaced **Arnold Berg,** who died last year.

* * *

Dave Snyder, 35, has been named claims manager for The Ralph M. Parsons Co. in Pasadena, Calif., a new position. Mr. Snyder reports to E. H. Klausen, manager of insurance. Mr. Snyder worked for 10 years in the claims area for Aetna, Cravens Dargan, Los Angeles.

* * *

Mike Panagiotu, 35, has been named acting risk manager for Pierce County, Wash. Mr. Panagiotu, who was hired last spring to the $24,000 a year position, expects to be named official risk manager next January at a salary of $30,000 a year. He is the county's first risk manager. He reports to the insurance advisory committee of the county and to three county commissioners. Mr. Panagiotu supervises a staff of five persons, including a safety engineer and two claims administrators.

Mr. Panagiotu was employed by Cizer & Dennett Adjusting Inc. in Tacoma for 10 years.

* * *

Jim Garrett, 28, has been named insurance representative at Transcontinental Gas and Pipeline in Houston. He is training to become assistant manager of insurance, where he will report to Bill Aben, manager of insurance. His duties include property and casualty insurance, contract reviewing and group benefits. Previously, Mr. Garrett was assistant claims supervisor at Travelers Insurance Co. for five years. His new position became effective in August.

* * *

Drew Farmer, 55, has been named vp at Brown & Root in Houston, although his duties haven't changed. Previously, he was insurance manager for 12 years with duties that included risk management, and property and casualty insurance. Before that, Mr. Farmer was an insurance agent with Houston Stevenson & Cummings in Houston.

* * *

In an eventual expansion of the loss control department at A. E. Staley Manufacturing Co. in Decatur, Ill., **Stephen J. Lockhart,** 32, has been named manager of insurance and loss control. Mr. Lockhart was previously corporate loss prevention supervisor. He will continue to supervise the corporate loss control function until plans are made to fill the position. In addition, he is responsible for administration of the company's property and casualty insurance program. He reports to assistant treasurer W. S. Robertson. Mr. Lockhart joined the company in 1969 as a staff industrial engineer and has also been an assistant labor relations supervisor.

Thomsen

Lockhart

Bill Johnson, 28, has been named assistant risk manager for the state of Wisconsin. He reports to Gordon Grenert, chief of risk management in the department of administration with duties including risk analysis and administration of the state's self-assumed liability program. Mr. Johnson comes from the University of Wisconsin-Madison, where he held the position of assistant risk manager for the last seven years He replaces **Dennis Brescoll,** 25, who has been hired as associate risk manager in a new risk management department at Esmark Inc. in Chicago He reports to Gary Bausom, who was hired in June as director of risk management. Mr. Brescoll was assistant risk manager for the state of Wisconsin for two-and-a-half years.

* * *

Myron Kuklok, 35, was hired as director of risk management for Chicago-based Budget Rent-A-Car, a division of Transamerica Corp. He replaced Gary Bausom who recently left the company to join Esmark Inc., as has been reported. Mr. Kuklok was formerly with Minneapolis-based National Car Rental Systems for seven years in a variety of insurance-related capacities including claims supervisor, assistant insurance manager and most recently, insurance manager for the licensee division and the subsidiary Green Valley Agency. Replacing him at National Car Rental Systems in Minneapolis is **Thomas E. Sonderup,** 34, who joined the company Sept. 1 after being with Hartford Insurance Group as claims supervisor in the Minneapolis office.

* * *

Charles H. Foos, 42, was promoted to manager of group in-

Continued on page 101

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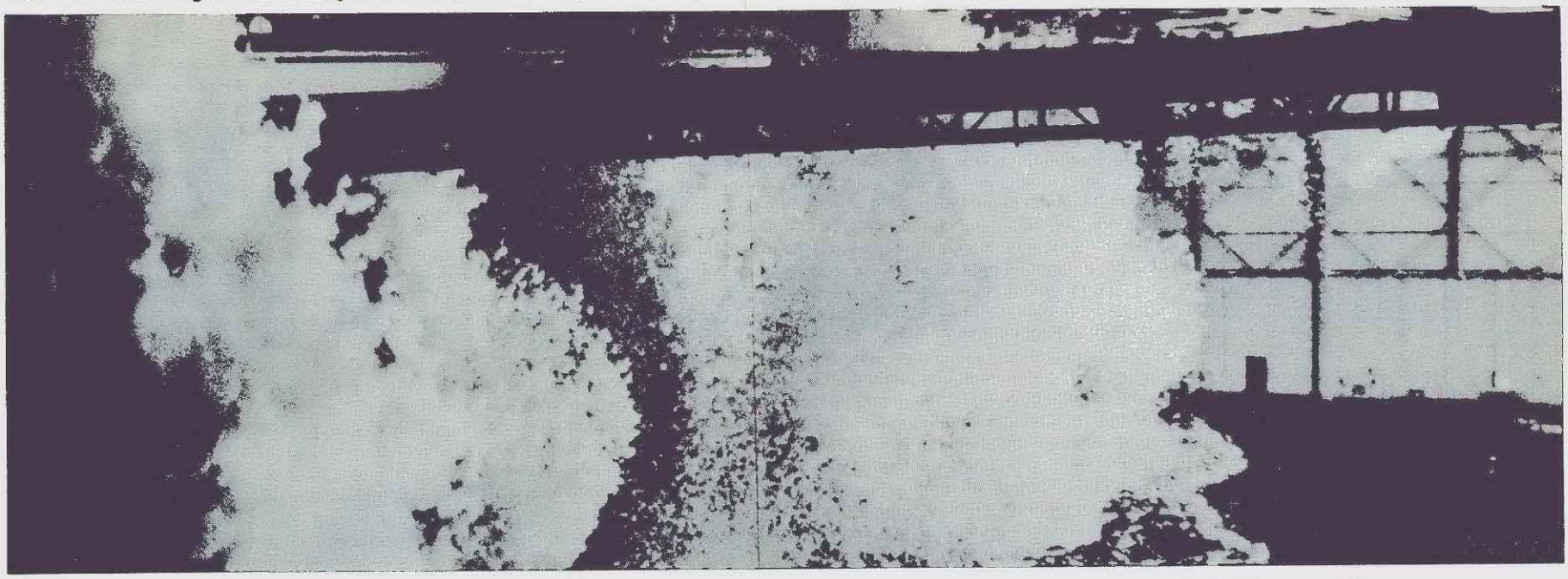

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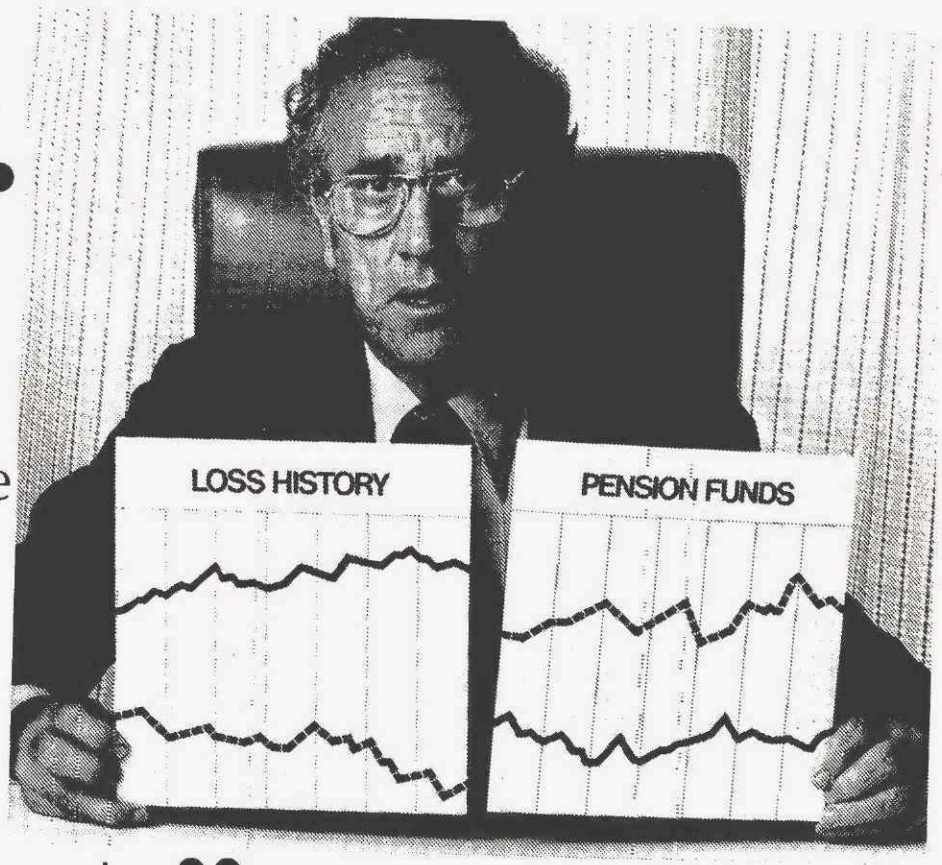

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