

SEPTEMBER 28, 1987

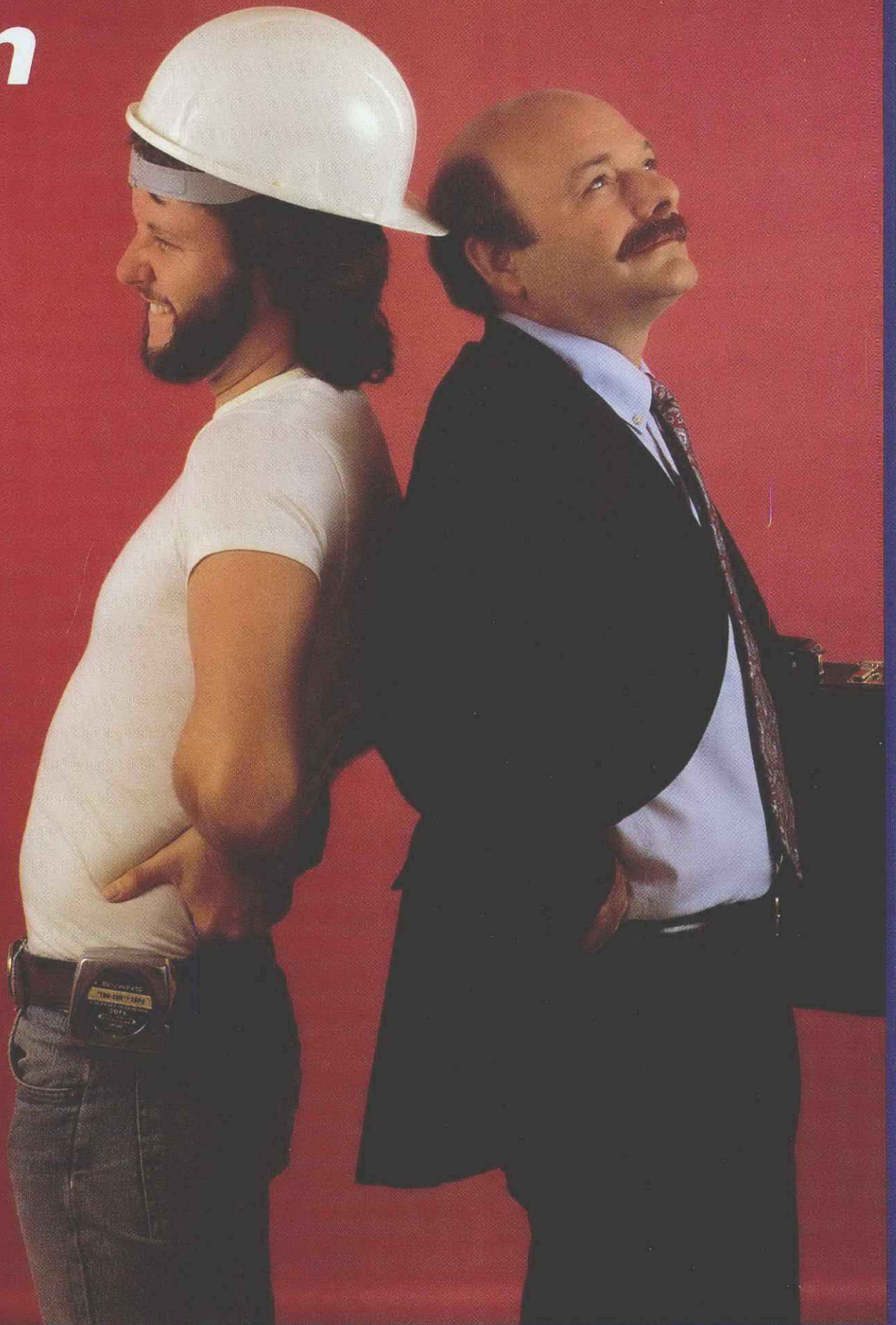
# Business Insurance

**Spotlight  
report:**  
**Workers  
compensation**

Reporting weekly for corporate risk, employee benefit and financial executives / \$1.75 a copy; \$68 a year

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## The lowdown on back injuries



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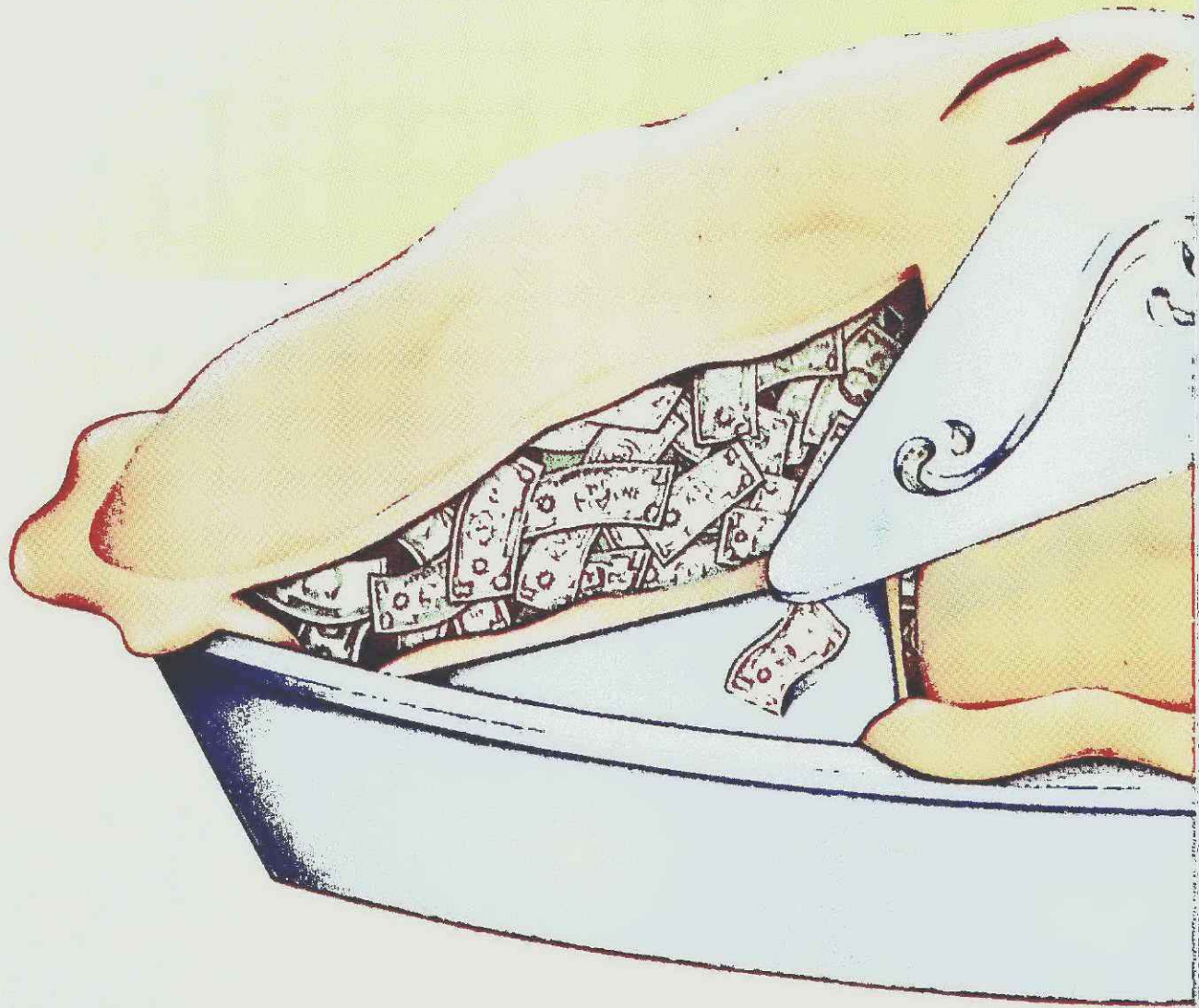
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History has shown that personal savings and programs like Medicare and Medicaid can't cover all the costs of retirement health care. Companies with retirement health benefits also face the problem of unfunded future liabilities.

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Sources for statistics: Employee Benefit Research Institute, 1985; Benefits Research, Inc. 1986; National Underwriter, 1986.

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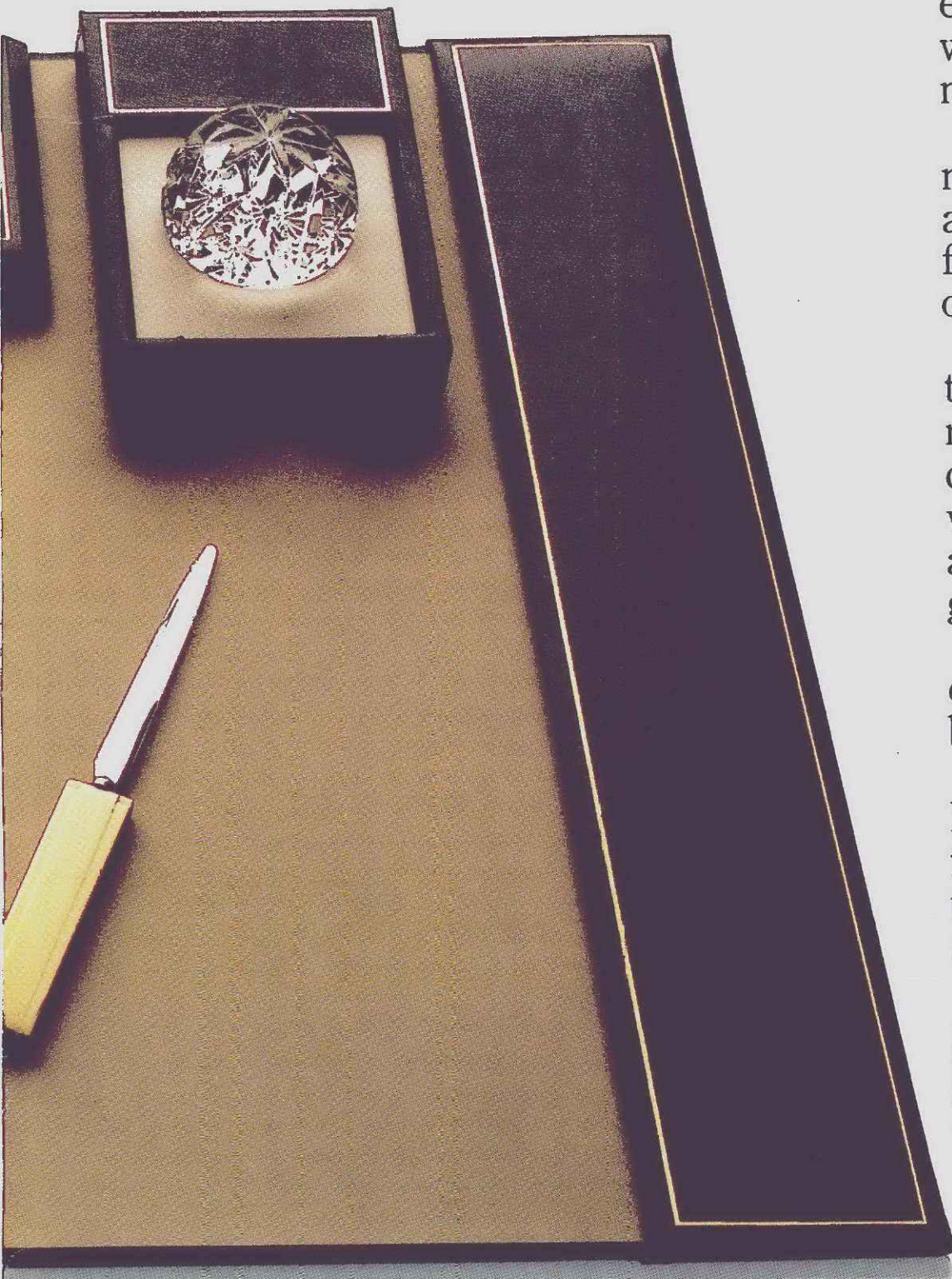
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## Opinions

## Tax incentive is essential

WE HEARTILY ENDORSE the recommendation made by a federal task force to give employers tax incentives to prefund post-retirement health care benefits.

After examining the issue for more than a year, the Task Force on Long-Term Health Care Policies recommended last week that contributions made by employers to special trust accounts to pay for retirees' health care benefits—including long-term care—earn tax-free interest (see story, page 53).

The task force, composed of members representing the National Assn. of Insurance Commissioners, insurance companies, several state and federal agencies and the elderly, noted that tax incentives for employee benefits do cut into the tax base.

But, the task force also noted that giving tax breaks for employee benefits is a long-established practice to encourage employers to offer socially desirable benefit programs.

We couldn't agree more. Just as employers are given tax incentives to prefund pension benefits, similar incentives should be given to encourage the prefunding of retiree health care benefits. Who could argue that post-retirement health care benefits are of any less importance to retirees than pension benefits?

Tax incentives will cost the government money in terms of lost revenues. But there also is a cost—a much larger one than lost tax revenues—to society when companies close, fold their post-employment health plans and retirees lose out on benefits be-

cause no funds were accumulated to pay for those benefits.

And, unlike retirees' pension benefits, which are partially protected by the Pension Benefit Guaranty Corp., there is no federal program guaranteeing retirees' health benefits when their former employers go out of business. To replace those benefits, retirees either have to buy individual policies, which can be prohibitively expensive, or end up on public health care programs for the poor, such as Medicaid.

Employers, though, have to understand that the only way Congress ever will approve tax incentives for the prefunding of retiree health benefits is through legislation that also sets vesting and participation standards for retiree health care plans. Certainly, that seems reasonable. If retiree health care benefits are given tax breaks, those benefits ought to be available to a broad class of participants that meet readily understood rules laid down by federal law.

Even with tax incentives, there is no guarantee that employers will adequately fund retiree health care plans. But without such incentives, employers that do want to prefund retiree health benefits will find it more difficult to meet their commitments.

We understand that a recommendation by a task force is a long way from the enactment of a law, but we hope that the task force report is an important first step in the debate on how to encourage funding of the mountain of retiree health care liabilities.

## Back injury standards needed

LOW BACK INJURIES ARE the most frequent cause of workers compensation claims and will probably remain so, despite the efforts of safety experts and ergonomic specialists to reduce workplace injuries. However, we have a suggestion to reduce the cost of workplace back injuries: More states should adopt standardized guidelines by which doctors can judge the seriousness of an employee's back injury.

According to the International Assn. of Industrial Accident Boards & Commissions, only 14 jurisdictions use American Medical Assn. guidelines

to determine the degree of an injured worker's disability, while another 19 recommend the use of the AMA guidelines and 10 others recommend that physicians use an orthopedic surgeon's manual to determine impairment.

While the AMA guidelines may not be a perfect tool, we agree with insurers that all states should mandate use of standards, like the AMA's, to determine the extent of an employees' back injury to both reduce malingering and to ensure employees with serious back injuries receives the treatment and benefits they or she need and deserve.

## Letters

## California fund relieves surety firms of burden

I am writing on behalf of the California Self-Insurers' Security Fund to correct certain aspects of the article, "Many Comp Self-Insurers Cannot Buy Surety Bonds," in the Aug. 3 issue.

The article observes that the surety bond market for workers compensation bonds in California is currently very tight "because of the long tail on such bonds, past losses and the fact that the California Insurance Department now requires surety bond companies to administer workers compensation claims for their bond holders that go bankrupt." It goes on to state that "many surety underwriters fear other states will follow California's lead. . . ."

The fact is that prior to the creation of

the California Self-Insurers Security Fund in 1984, surety companies had the burden of self-administration when bond holders went bankrupt, and this continues to be the situation in many states. When the security fund was created, though, the California director of industrial relations was empowered to direct the security fund to assume that burden, and recent legislation has reduced the financial exposure of surety companies for administrative costs.

Perhaps more significantly, though, the California Division of Industrial Relations has directed the Department of Self-Insurance Plans to monitor more carefully the financial condition of self-insurers within the state and has begun to insist upon significantly higher security deposits from financially vulnerable participants. By tightening up the financial requirements for those that choose to self-insure and in some cases revoking the right to self-insure when the company's financial condition is suspect, California is leading the way in reducing the risk of default.

These measures will undoubtedly reduce future losses by surety companies and improve the market in California.

Paul Bayer  
Chairman

California Self-Insurers Security Fund  
Sacramento, Calif.

## Consultant praises Iowa regulators

To the editor: We read with interest the risk retention group round-up item on the formation of the American Feed Industry Insurance Co. Risk Retention Group in Iowa (*BI*, July 20).

As the consultants who performed the feasibility study as part of the implementation team, it was our observation that the Iowa Insurance Department, which regulates a large number of property and casualty companies, was very professional and capable in its oversight of the establishment of its first risk retention group.

The domicile makes sense, because it not only gives effective oversight to the risk retention group but also gives very strong credibility for the group when viewed by other state insurance departments, as well as by potential policyholders.

The benefit of using a capable state such as Iowa pays off not only in acceptance of the risk retention group in other states, but also in the ability to secure reinsurance at more favorable costs.

Richard S. Betterley  
President

D.A. Betterley Risk Consultants Inc.  
Worcester, Mass.

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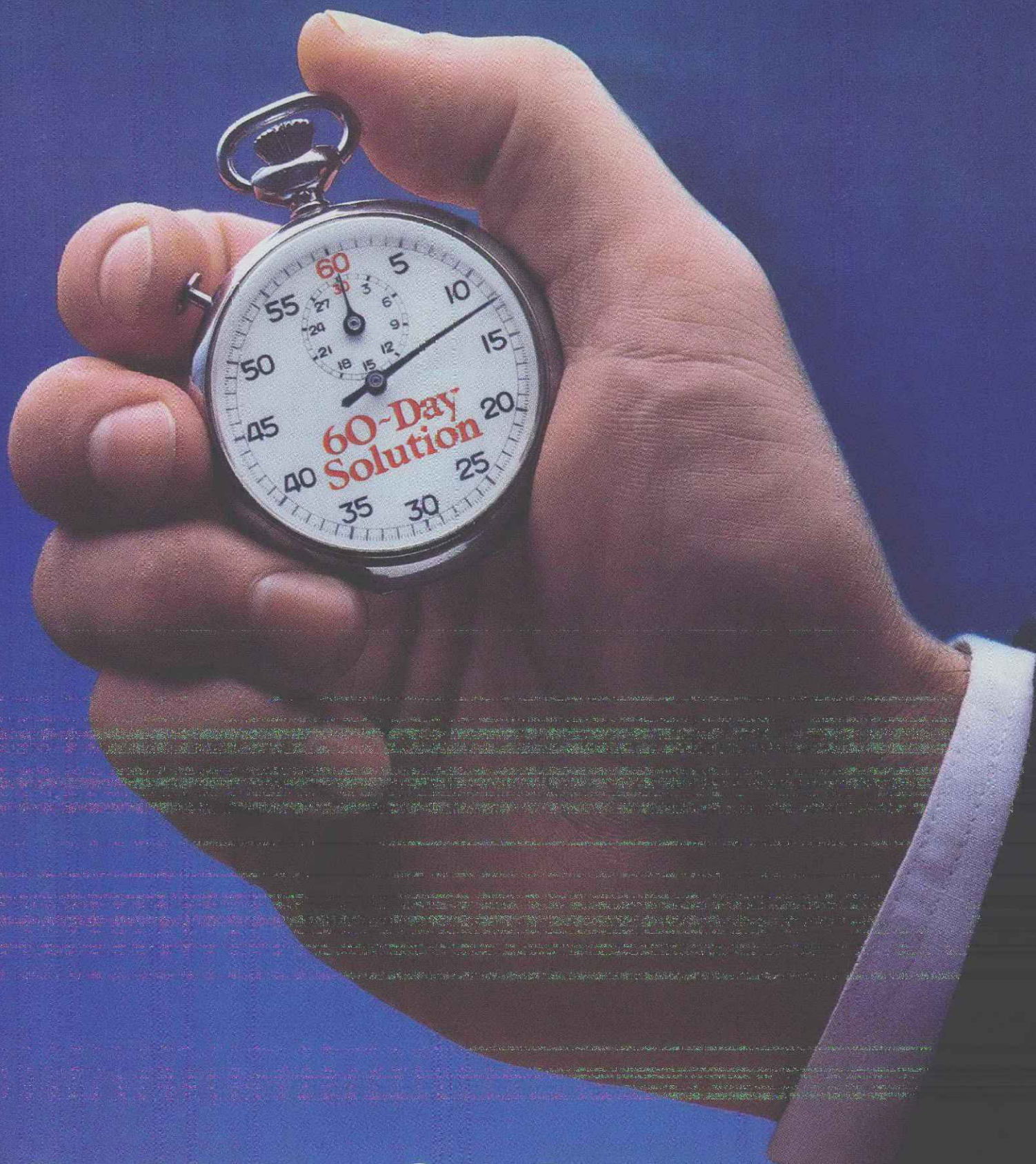
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## Back injuries

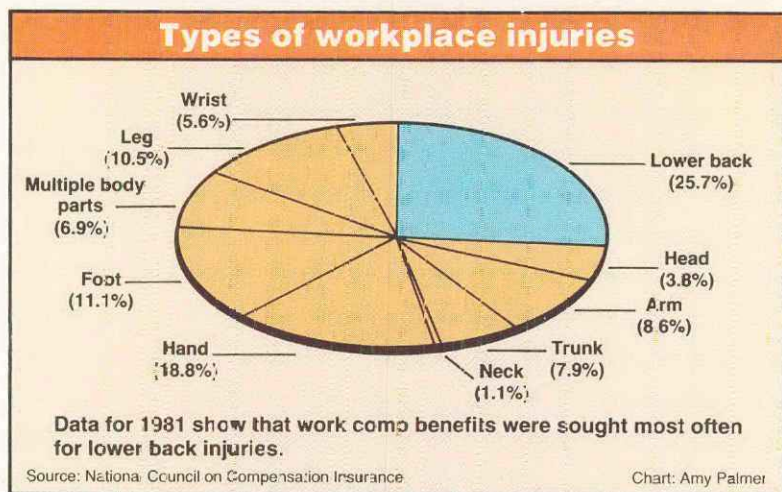
Continued from page 3  
for low back sprains and strains," according to the NCCI.

Average indemnity payments for lower back injuries ranged from less than \$3,000 in Connecticut and Wisconsin to more than \$7,000 in Pennsylvania and Michigan.

Meanwhile, medical expenses averaged less than \$1,000 per work comp claim in Connecticut and Maine but almost \$3,000 per claim in Florida and Georgia, the NCCI said.

The claims data did not reveal the cause of the large state-by-state differentials, but differences could be the result of industry or workforce composition, economic conditions or the workers compensation administrative procedures in various states, according to Mr. Borba.

However, "the relatively greater cost of low back injuries cannot be



attributed to the type of benefits received by the claimants," the NCCI study found.

The frequency of permanent partial injury benefits—which are usually more expensive than tem-

porary total and temporary partial disability injury claims—was virtually the lowest among workers comp claimants with lower back injuries, according to the study by the NCCI.

In addition, the Cambridge, Mass.-based Workers Compensation Research Institute found that only 25% of back injury account for about 90% of back injury costs. The more serious cases often involved surgery and resulted in some degree of permanent partial disability.

While the direct costs of low back injuries are significant, "the indirect costs to the system are tremendous," said Robert Nevens, vp of claims for Nashville, Tenn.-based Parthenon Insurance Co., a captive insurer owned by Hospital Corp. of America.

After an employee reports a work-related back injury, employers are faced with the administrative expense of processing the required paperwork, the loss of the employee's productivity and perhaps higher labor costs incurred to bring in a temporary worker to fill the injured employee's job.

In addition, after paying medical

and indemnity benefits, an employer may also have to deal with a contested claim that can result in added costs for medical and legal advisers.

Most observers point out that back injury claims are more likely to be adversarial than most other types of workers compensation claims, although some say stress claims and some other types of claims are as likely to be contested as back claims.

Back injuries occur in blue-collar or white-collar jobs where workers handle materials or, in the case of health care professionals, patients.

The victim also can be a carpenter hauling wood, a computer salesman lifting display equipment into his car or even a business executive who simply reaches for a pen that fell on the floor.

Workers facing the highest risk of low back injuries are those in the construction, mining, transportation and manufacturing industries, according to studies cited by Boston-based Liberty Mutual Insurance Co.

The highest risk of low back injuries include laborers, garbage collectors, warehousemen, mechanics and nurses aides, the studies found.

The NCCI study found the aver-

**The NCCI study found the average low back injury claimant was a man about 35 years old.**

age low back injury claimant was a man about 35 years old. Women filed only about one-quarter of all low back claims.

Workers compensation observers disagree about the impact that the aging of the American population may have on the frequency of low back claims.

However, once a worker injures his back, he is four times as likely to re-injure it, according to Liberty Mutual's data.

In addition, the NCCI found that 95% of all low back injuries are strains or sprains.

However, more serious back injuries can result from herniated intervertebral discs, a disc with a gelatinous center that protrudes from a fibrocartilaginous ring and frequently presses on a nerve causing lower back or leg pain.

"Since workers compensation costs began to rise in the late 1960s, back injuries have been a source of frustration," pointed out Terry Broxson, president of Back Systems Inc., a Dallas-based risk management consultant.

Although observers agree that relatively few employees file fraudulent workers compensation claims, employers sometimes question whether back injuries are work-related and thus should be covered by workers compensation (see story, page 3).

Most back injuries aren't like a lost finger where an employer can see the blood or the bandages, said Tony Vogel, home office workers compensation claims manager for Wausau Insurance Cos. in Wausau, Wis. As a result, "it is more problematic from an employer's point of view."

But as Mr. Vogel learned from his own chronic back pain, which was alleviated only by surgery, "You can get to a certain point where pain becomes debilitating."

John F. Burton Jr., a Cornell University professor and workers compensation authority, says: "The attempt to distinguish work-related from non-work-related back disorders has produced legal

Continued on page 14

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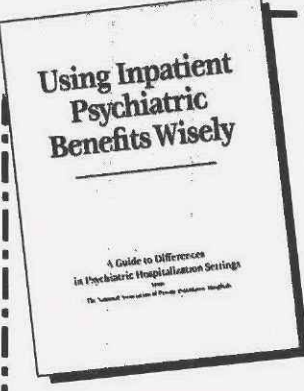
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BI 9/28

## Back injuries

*Continued from page 12*  
doctrines of questionable scientific validity, extensive litigation, prolonged delays and often arbitrary decisions."

Almost all states consider a herniated disc to be a workers compensation claim "without exacting proof of unusual exertion or mishap as a cause," according to the workers compensation treatise by Arthur Larson, a professor of law at Duke University in Durham, N.C. And, for other types of back injury cases, "a substantial but somewhat less one-sided majority of jurisdictions accept usual exertion as leading to accidental injury," according to Dr. Larson.

However, Ohio last year adopted a new definition of compensable injuries that rules out injuries or disabilities caused primarily by the deterioration of a tissue, organ or body part, said Robin Obetz, a

partner in the Columbus, Ohio, firm of Vorys, Sater, Seymour & Pease and executive secretary of the Ohio Self Insurers Assn.

In addition to questioning whether a back injury is work-related, employers also may question when an injured employee is ready to return to work. This is especially true if the employee is involved in prolonged medical treatment because medical specialists themselves disagree about treatment (see story, page 16).

And, employers can question the extent to which a back injury impairs an employee's ability to function and thereby creates a compensable disability. One factor in determining an employee's degree of impairment is tolerance for pain, a subjective standard that can vary widely among employees.

However, states that use medical guidelines—like those drafted by the American Medical Assn.—add some objectivity to impairment ratings, most observers say.

Causation, return to work and degree of impairment are "friction points" over which some injured employees and employers fight, WCRI's Mr. Victor said.

Jim Ellenburger, assistant director of the AFL-CIO's department of occupational safety, health and Social Security said, "This is one more area where attempts are made by employers and insurers to reduce losses or claims by contesting these cases."

Workers compensation proceedings to determine an injured worker's degree of impairment and resulting disability benefits are adversarial, except where states use medical panels or independent medical examiners.

In adversarial systems, lawyers find "dueling" doctors to offer medical opinions favorable to their clients' positions, which increases workers compensation costs.

"I'm amazed that so many doctors can be bought," said one employer spokesman who asked not be named. "It's unfortunate that we cannot use a responsible treating physician who will give us an honest opinion."

But other players in the system also are sometimes at fault, said Bill Levasseur, a defense attorney who is a partner in the Baltimore firm of Semmes, Bowen & Semmes.

Attorneys sometimes "prostitute" themselves in making more out of a case than it is worth, he said. State hearing examiners may be too one-sided and insurers, which start out wanting a fair deal but then focus on not being duped by a malingering employee, sometimes go too far in trying to save money, he added.

The situation in California, where lawyers use billboards to solicit injured employees' calls, is worse than in most states. Oakland, Calif.-based Safeway Stores Inc. combats that by conveying the message that the company wants to treat an injured employee fairly, and "you don't need to share your award with an attorney," said Nikki Burrous, manager of Safeway's loss control department.

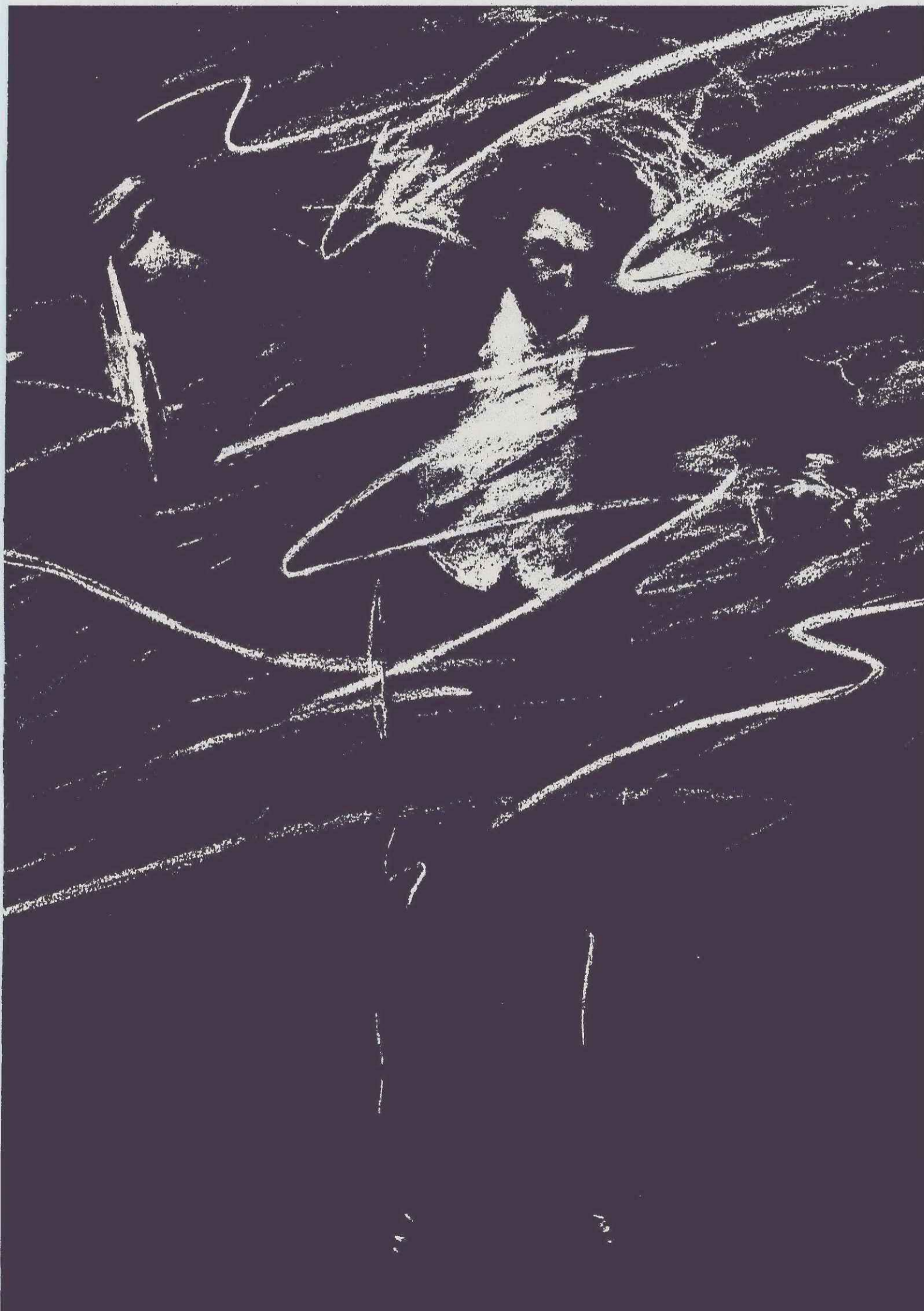
Employers can take other steps to reduce losses from employees' back-related injuries.

Back injury claims and losses can be reduced through planning, training and developing good work relationships with employees before an injury occurs, observers say (see story, page 22). After an injury, an employer can try to ensure that an employee receives appropriate medical and rehabilitation services, implement claim cost controls and modify jobs.

"In spite of the incentives to reduce workplace hazards, the problems that contribute to the frequency and costliness of low back injuries are not likely to be resolved without substantial workplace modifications," the NCCI said.

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*—Andrew Carnegie*



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# Doctors differ on treatment of back injuries

By MEG FLETCHER

While medical experts agree that back injuries should be treated immediately, they disagree over the type and duration of treatment.

This disagreement sometimes puts stress on the recuperating employee, which may slow recovery.

Still, most doctors agree that a prescription of bed rest, analgesics or muscle relaxants and less strenuous activity over a short period is sufficient to cure most one-time sufferers of acute low back pain.

"Many doctors routinely recommend a week of bed rest for those with acute back pain," according to a research brief published in March by the Cambridge, Mass.-based Workers Compensation Research Institute.

However, a study of about 200 public clinic patients by the University of Texas Health Science Center found that the best treatment for the most cases of acute low back pain may be only two days of bed rest.

The patients, none of whom was seeking workers compensation benefits for their injuries, were divided into two groups: one told to rest in bed two days, and the other told to rest seven days.

Three weeks after they sought treatment and again after three months they were interviewed on a variety of outcome measures including: duration of pain, satisfaction with care and residual physical and psychological impact.

After three weeks, the group with two days' bed rest reported 45% fewer lost work days than did the group prescribed seven days' bed rest. And those who were incapacitated longer were more likely to seek care elsewhere.

After three months, similar outcomes were reported.

"The implications of this study are that a recommendation of two days may have the equivalent effect (of weeklong bed rest) on recovery and reduce lost work time by 45%," the WCRI concludes.

However, the study warns that for patients suffering more serious injuries, like "a herniated disc with motor deficits," longer periods of bed rest may be necessary.

But because the study covered only a specific population of non-workers compensation recipients, "we are not sure how to apply" the results, said WCRI Executive Director Richard Victor.

While two days of bed rest may be enough to heal some patients' injuries, Dr. John Frymoyer, head of the University of Vermont's back pain treatment and engineering center in Burlington, says that statistics show 50% of those who suffer a single back strain or sprain will recover after a week of a combination of bed rest, pain relievers and modified activity. The recovery rate using similar treatment climbs to 80% after one month, 90% after two months and 95% after three months.

For persistent back pain—as long as the patient does not have a fever—Dr. Frymoyer recommends similar treatment for four to six weeks. However, other options should be explored after that time if the patient suffers from sciatica—pain along the sciatic nerve in the back of thigh—and loss of strength, he explains.

Chiropractic manipulation for up to two weeks can help some patients, he added.

But when conservative therapy doesn't work, pain-stricken patients typically will see other specialists like neurologists, neurosurgeons and orthopedic specialists, who use tests including spine X-rays, CAT scans and electromyograms to pinpoint the

source of the pain, says Dr. Joseph K. Wang, medical director of the Yale Center for Pain Management.

However, consultants and utilization review services recommend that a reviewing doctor question the treating doctor to ensure that the patient's treatment is not prolonged unnecessarily.

Dr. Frymoyer said that employers should advise employees disabled for extended periods to seek expert consultation and avoid surgery unless there are "very clear" indications that it is necessary.

"Surgery is not a panacea," says Dr. Frymoyer, who is an orthopedic surgeon. He believes surgery should be limited to no more than 1% of back injury cases.

Besides being costly and unnecessary, surgery can be harmful to

an employee's health, doctors agree.

Dr. Wang recommends treating acute back injuries like disc herniations with bed rest, consultation with a neurologist and effective pain management during the first four to six weeks. During the next two to six months, he recommends local injections of steroids, limited physical activity, physical therapy and rehabilitation programs.

Patients should avoid any physical stress like lifting or twisting for six months and may have to be off work six to 12 months for the best results, Dr. Wang said.

While "we like to send them back (to work) as quickly as possible," that was done too quickly in the past and the patients re-in-

jured themselves, he explains.

The stress of dealing with the workers compensation system, family members and the employer sometimes causes an injured employee to feel that he has lost control of his life, resulting in a "chronic pain syndrome," says Dr. Edwin Wyman, chief of fracture service at Massachusetts General Hospital in Boston and an assistant clinical professor of orthopedic surgery at Harvard University.

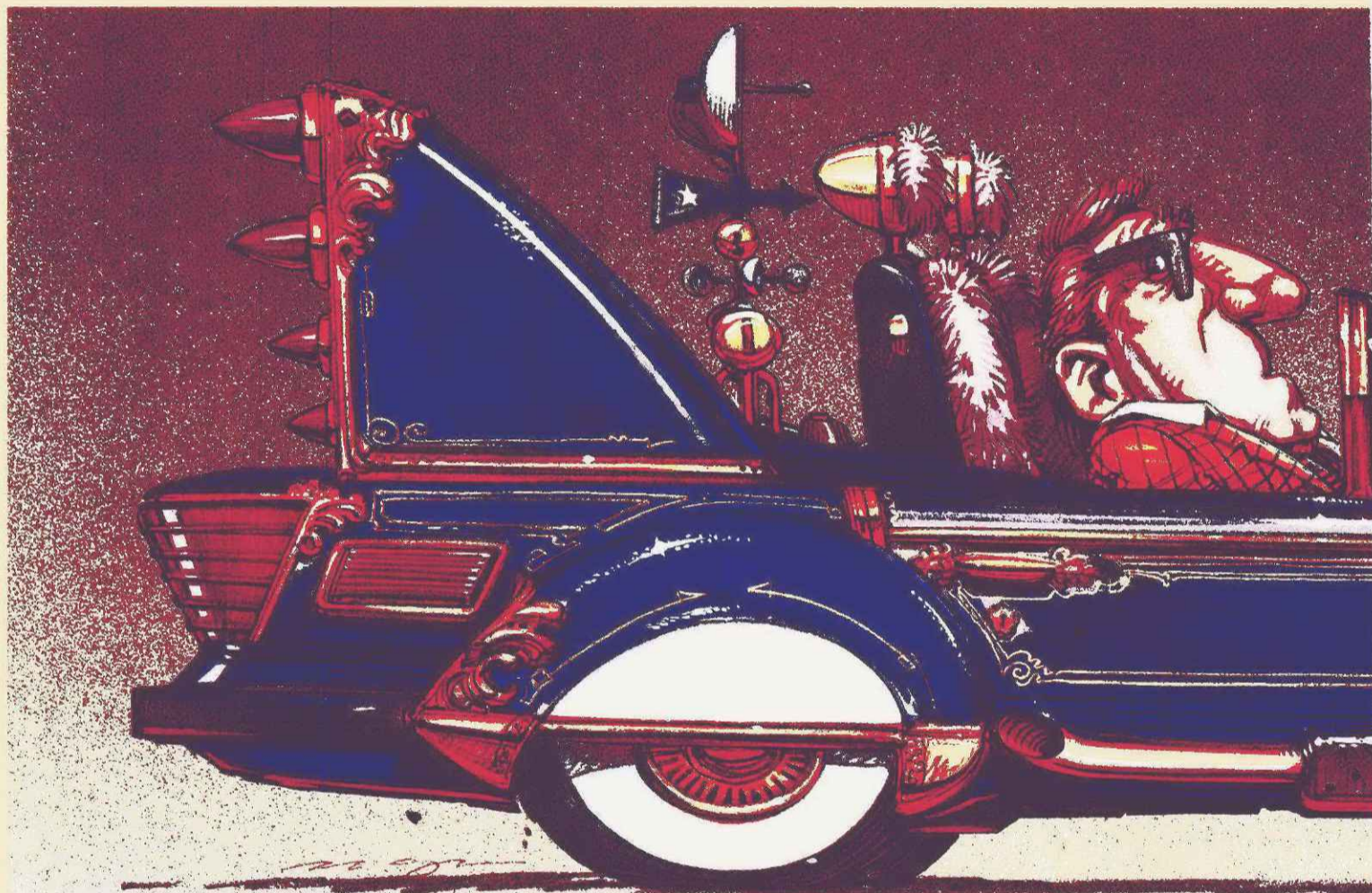
Although sometimes viewed as malingerers, patients suffering from chronic pain syndrome actually become conditioned to feeling pain as a way to cope with the psychological, economic and social stresses of the injury, Dr. Wyman explains.

While pain clinics report favor-

able results in the treatment of chronic pain among non-workers compensation patients, they have poor records in treating workers compensation patients, says Dr. Bernard Yudowitz, medical director of New England Rehabilitation Hospital's pain management unit and director of psychiatry at the Woburn, Mass., hospital.

This is partly because pain clinics usually don't treat workers compensation patients until one or two years after the injury. By then, about 90% of chronic pain patients covered by workers compensation—which includes a high percentage of back cases—are chemically dependent, Dr. Yudowitz said.

To avoid this scenario, he recommends that patients be referred to pain clinics after three months. ■



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# Employers chisel away at comp costs

By MEG FLETCHER

Employers across the United States are exploring ways to contain workers compensation costs, especially for back-related injuries.

"This is a nationwide problem," said Edward M. Welch, director of Michigan's Bureau of Workers' Disability Compensation.

"The level of interest in containing costs is high," agreed Richard Victor, executive director of the Cambridge, Mass.-based Workers Compensation Research Institute.

And firms offering cost containment services "are now mushrooming up," pointed out

Linda Brodt, a consultant in the cost-containment division of National Medical Audit Inc.

National Medical Audit, a San Francisco-based division of benefit consultant William M. Mercer-Meidinger-Hansen Inc., advises employers which cost containment services to buy.

Those services can include preadmission certification, utilization review, hospital bill auditing and fee schedule review.

"The predominant perception is that workers compensation is a gravy train," said Gail Nethercut, National Medical Audit's director of workers compensation medical cost containment.

"Health care providers have been so squeezed by measures to contain the cost of non-workers

**'The predominant perception is that work comp is a gravy train,' says Gail Nethercut.**

comp claims that workers compensation claims are open to excess utilization," said Frank Dalicandro, president of Financial Direction Inc. in Philadelphia. The consulting firm applies cost containment approaches popular in employee benefits plans to workers compensation claims.

"Cost shifting, fragmented billing, excessive treatment and

overutilization are just a few of the problems," said Catherine Johnson, a marketing vp for Con-ServCo., a Tampa, Fla.-based health care cost management firm.

For example, the Workers Compensation Research Institute says a 1984 study found that hospitals in Florida were able to collect 74% of total charges from all payers. However, hospitals collected 91% of total charges for workers compensation-related services.

"This disparity reflects, in part, discounts offered to preferred customers—public and private—and the shifting of overhead costs to workers compensation payers," the WCRI reported in June 1986.

Also included were a small percentage of uncollectible debts, Mr. Victor said.

"Under workers compensation, it seems (injured employees) are treated a very long time because the money is available," said Deborah Howard, claims supervisor for Parthenon Insurance Co., a Tennessee-domiciled single-parent captive insurance company owned by Nashville, Tenn.-based Hospital Corp. of America.

Injured employees are treated a lot longer than if they are covered under a private medical insurance plan or paying for treatment themselves, she said.

"There is a screaming need for medical management of workers compensation claims," said James McNamara, corporate manager of loss prevention and cost containment for ARA Services Inc. in Philadelphia.

The goal is not only to save money, but also to fulfill a moral responsibility to ensure that an injured employee gets the most appropriate treatment quickly, he said.

However, employers find it more difficult to apply cost-containment measures to workers compensation claims.

"You can't use a cookie-cutter approach," Mr. McNamara said, referring to the statutory requirements under each state's workers compensation program that give employees specific rights.

"The basic philosophy of the workers compensation law is that it is to be liberally construed in favor of employees," said John Antonakes, vp and assistant claims manager with Liberty Mutual Insurance Co. in Boston.

And, it is difficult to direct employees to specific doctors because the majority of states allow injured employees to have free choice of doctors, Mr. Antonakes said.

However, some states limit this freedom by requiring employees to include their doctor's name on medical insurance forms prior to an injury, or by limiting treatment by a free-choice doctor to 30 days. After 30 days, if additional treatment is required, the employer can request a second opinion from another doctor or a utilization review firm.

In all states, an injured worker is generally eligible for unlimited medical benefits for which he pays no deductible.

A cost-saving measure often used by employers with non-workers comp medical benefits is imposing a deductible. While this measure might reduce doctor shopping, it would not be in keeping with the philosophy of workers compensation, observers say.

However, some states handle the situation differently if a worker's back injury reaches the stage where it is considered a permanent disability.

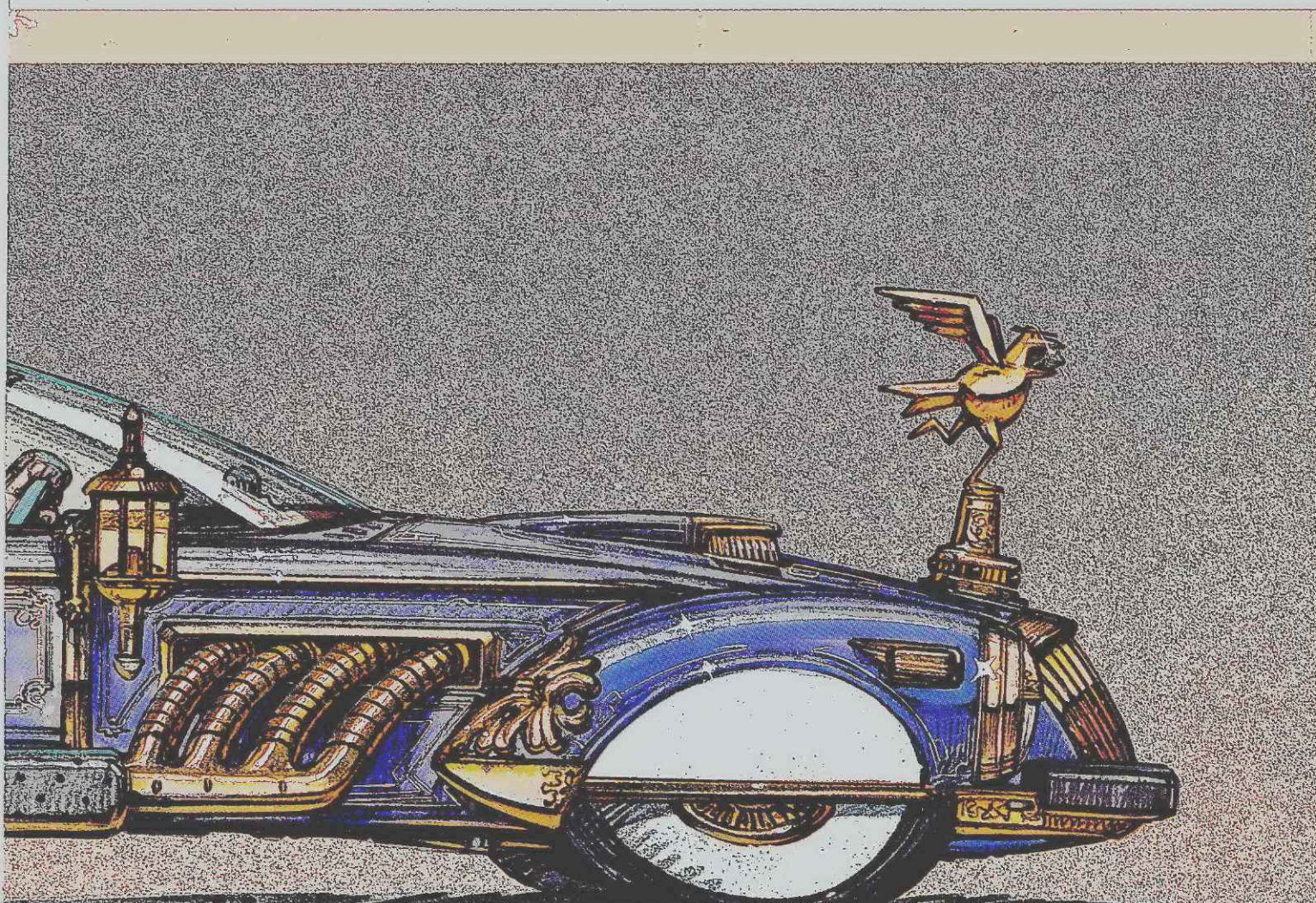
Independent medical examiners rate permanent impairment or disability in 17 U.S. jurisdictions, while medical panels evaluate injuries in six jurisdictions, according to a survey released earlier this month by the Medical Committee of the International Assn. of Industrial Accident Boards & Commissions.

To evaluate the degree of impairment an injured worker has sustained, 14 U.S. jurisdictions use American Medical Assn. guides, while 19 more recommend use of the AMA guides.

And, 10 jurisdictions also recommend use of an orthopedic surgeons' manual in evaluating impairment.

Insurers, such as Liberty Mutual generally favor the use of AMA guides as a way to standardize impairment ratings, Mr. Antonakes said.

Continued on next page



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## Comp costs

*Continued from previous page*

However, some plaintiffs' attorneys question the scientific validity and accuracy of the guides. "The pain factor isn't taken into consideration much at all," said Steven Babitsky, a plaintiffs' attorney with Kistin, Babitsky, Lattimer & Beitman in Falmouth, Mass. He has also co-authored a 129-page book that analyzes the AMA guides.

Still, controlling medical charges and fees for workplace injuries is a problem in some states.

"Once it is determined that it is a workers compensation case, we see a lot of excess charges," said National Medical's Ms. Nethercut.

For example, instead of a provider charging a \$35 fee for a single group of blood tests, the provider charges a total of \$120 for individual tests when they are covered under work comp, she said.

"It's a billing abuse."

To combat billing abuses, 20 U.S. jurisdictions have adopted a fee schedule for workers compensation cases. The schedule is mandated by law in 17 of those jurisdictions and is recommended in the other three, the IAIABC survey says.

In addition, 10 more jurisdictions plan to implement a fee schedule. The schedule would be mandatory in eight of those jurisdictions and recommended in the other two, the survey says.

Employers also are interested in applying cost-containment measures to workers compensation claims because of a lack of claims data, according to Mr. McNamara of ARA.

But there are steps that employers can take to contain the costs of workers compensation claims.

An employer should scrutinize the claims-paying procedures of its insurer or third-party administrator and decide whether they are acceptable, said Terry Broxson, president of Back Systems Inc., a Dallas-based risk management firm.

Some insurers, such as Wausau, not only track an employee's treatment plan but also try to help the employer modify the job so an employee can return to work as soon as possible, said Tony Vogel, Wausau's home office workers compensation claims manager.

But sometimes the attending physician does not have adequate information about the injured em-

**'Communication and caring leads to better control in a positive way,' says Tony Vogel of Wausau.**

ployee's job requirements, while the employer does not have enough information about the nature and extent of the employee's injury, he said.

"Better communication and caring leads to better control in a positive way," Mr. Vogel said.

Even if an insurer's or TPA's services are adequate, employers that spend \$500,000 to \$1 million annually on claim costs may want to spend 10% to 15% of that sum to have an in-company person help resolve those claims, Mr. Broxson said.

For example, General Foods Corp. has an employee, such as a plant administrator or nurse, designated as its workers compensation administrator at each location, said David Hieber, corporate manager of property/casualty claims, based in Rye Brook, N.Y.

A General Foods' representative meets with the claims adjuster monthly to review claims and spotlight those that need special attention, he said.

The Washington Metropolitan Area Transit Authority found that designating employees to provide the risk management office with information concerning a claim and assisting in its verification contributed significantly to solving workers compensation problems in its Department of Bus Services (*BI*, April 14, 1986).

In an effort to control costs, ARA implemented a ConServCo. disability management and medical cost management program with the help of ARA's third-party administrator, Alexis Inc., a unit of Alexander & Alexander Services Inc.

ARA spent \$17.36 million on back-related claims last year, which was about 62% of all claim costs. The company, which employs more than 115,000, is a services management company that provides institutional food services

*Continued on next page*

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Continued from previous page  
as well as day care, nursing home and emergency room management services.  
The disability and medical cost management program includes: pre-certification with second-surgical opinions, hospital bill audits, medical case and disability management and fee schedule reviews in those states that have workers compensation schedules.

The program was begun at ARA locations in California, Florida, Texas and Illinois and expansion is planned at other locations, Mr. McNamara said.

The results have been positive, he said. In the first six months, 92 hospital days were saved, amounting to a 17% reduction in costs, Mr. McNamara said. In addition, there were savings in ancillary services related to hospital stays, he pointed out.

A fee-schedule review program now operating in six states helped ARA get back \$6.39 for every \$1 spent for review during the first six months of this year, Mr. McNamara said. During that period, ARA found that medical providers overcharged the company \$119,000, or 22%, on \$537,000 in total charges.

"I find it amazing that people aren't looking at these things. That's a ton of money," Mr. McNamara said.

The fee schedule review is operating in New York, Massachusetts, California, Florida and Oklahoma and is starting up in Colorado.

In addition, ARA has legal bills related to workers compensation cases audited because the legal costs have increased "dramatically," he pointed out.

ARA, which has a guaranteed-cost insurance program, has a more difficult time promoting cost containment and loss prevention among its managers than does a company that self-insures its workers compensation exposure, Mr. McNamara said. A self-insurer is more directly affected because loss dollars are all company dollars, he explained.

However, internal cost-allocation programs and incentive programs help, he said.

Oakland, Calif.-based Safeway Stores Inc. saved \$1.5 million net through cost-containment efforts for 60 back-related cases from June 1986 to June 1987, according to National Medical Audit's Ms. Nethercut.

The length of stay for 30 non-surgical cases was reduced to one to three days from 4.5 days for a net savings of \$1,500 per case, she said. And, the length of stay for surgical back cases was reduced an average of 3.3 days to 4.7 days from the eight-day expected stay, she noted. This resulted in a net savings of \$2,000 per case, she added.

In addition, National Audit developed a preferred provider network for Safeway.

However, implementing cost-containment programs like that can be difficult in a state like California, in which an injured worker can go to his own doctor if the worker has preselected the physician or if he has been under the care of an employer-designated physician for 30 days, said National Audit's Ms. Brodt.

Employers need to look beyond medical costs to contain workers comp expenses, observers say.

Other types of employer-paid or worker-paid disability programs should be structured so that an injured worker does not get more money off the job than on the job, Ms. Brodt said. Otherwise, there may be a disincentive for the employee to return to work, she explained.

"This can be a problem, especially when you deal with lower-paid employees," said Robert

**'Once it is determined that it is a work comp case, we see a lot of excess charges,' says Gail Nethercut. For example, instead of charging \$35 for a group of blood tests, a provider charges \$120 for individual tests covered by workers comp.**

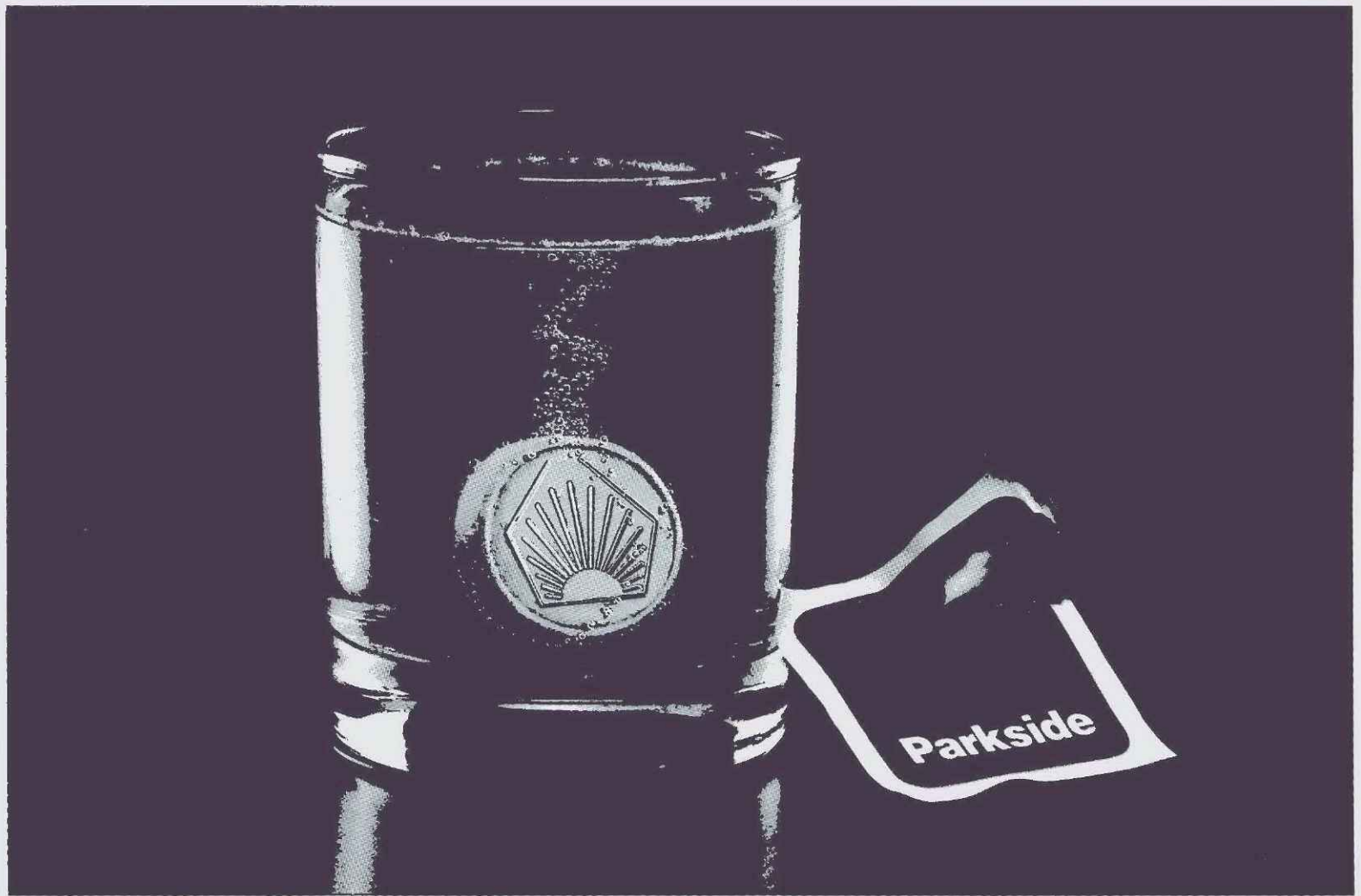
Nevens, vp of claims at Parthenon.

However, a claimant's own personality, desires and perceptions all play a part in his willingness to return to work, Mr. Nevens said.

General Foods' Mr. Hieber said his company finds it a bigger problem to make sure that an injured

employee receives enough money to live on during his recovery period. For example, New York offers an injured worker only up to \$300 per week in benefits. However, General Foods has a disability program to guarantee a worker 55% of his wages. ■

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# Employers play key role in rehabilitation

By MARK A. HOFMANN

Employers and insurers are reducing the cost of workplace back injuries by helping to rehabilitate injured workers quickly.

By shortening the time that workers with back injuries are off the job, employers not only reduce lost workdays, they also increase productivity and improve morale.

And, employers can further smooth the way to speedy recovery by maintaining a good relationship with its workforce before an injury even occurs, experts say.

If workers and management view themselves as antagonists, the recovery process will be difficult, explains Edward M. Welch, director of the Michigan Workers Disability Compensation Bureau.

But if employers show genuine concern and assist the injured employee in his efforts to return to work, the healing process will be much easier, he says.

Mr. Welch contrasts the plight of an injured worker to that of an injured professional football player. When an injured athlete is removed from the field, everyone from the fans to the opposing players treat the event with respect and concern.

But an injured worker may find himself treated as a malingerer by both his superiors and his co-workers, which can breed distrust that leads to more complicated and adversarial workers compensation claims, Mr. Welch says.

One of the best ways a company can express its concern for the welfare of workers suffering from back injuries, according to Mr. Welch, is to "go out of its way and get him back to work quickly." Whether the job is identical to the worker's previous one is not as critical as the assurance that a job is waiting.

"Getting him back to some kind of work as soon as possible is very, very important," he stresses.

Tony Vogel, compensation claims manager of the home office for Wausau Insurance Co. in Wausau, Wis., which offers its workers compensation policyholders a rehabilitation program that treats all types of workplace injuries, agrees that the pre-injury relationship between the injured worker and his company is key in determining how quickly a worker will recover.

But even the best employer/employee relationship cannot totally pre-empt the possibility of an on-the-job injury. And, once an injury occurs, Mr. Vogel suggests employers intervene immediately to mitigate the impact of the accident.

Each day an employee who earns \$300 a week is off the job costs an employer \$60, he said. Based on the 40,000 lost-time cases Wausau managed last year, putting injured workers at that salary level back into the workforce one day earlier would have saved employers \$2.4 million, he estimated.

To speed recovery, Mr. Vogel advises the employer to maintain a "constant communications network" with the accident victim. The injured employee must know that his fellow workers and management genuinely care about him.

Getting the communications network on-line quickly is crucial, Mr. Vogel says, because employees often view their jobs as a sort of second family, a family from which they expect aid and comfort.

The support mechanism needs to focus on the positive, Mr. Vogel says. "It's important the injured employee knows there's a place for him or her," whether or not that job is the same one the worker held before being injured.

Such positive reinforcement

**'It's important to build the employee's self-confidence back,' Mr. Vogel says. 'You can't motivate people, but you can help them motivate themselves. It's important to treat the entire person—the holistic approach.'**

should continue throughout the physical rehabilitation process and beyond, he says.

Mr. Vogel cites several strategies for carrying out this back injury rehabilitation program, all of which involve rehabilitating the mind as well as the body.

Employers, for example, may speed the transition back to the job

by modifying the employee's working environment. Doing so may involve something as simple as changing the position of a workbench or piece of machinery to reduce stress on the back. It also may involve encouraging the returning worker's fellow employees to provide some extra assistance during his back-to-work transition pe-

riod.

In addition psychological tools can be used: Allowing an injured worker to return to work during the middle of the week rather than on Monday lets him ease back into the flow, Mr. Vogel says.

"It's important to build the employee's self-confidence back," Mr. Vogel says. 'You can't motivate people, but you can help them motivate themselves. It's important to treat the entire person—the holistic approach.'

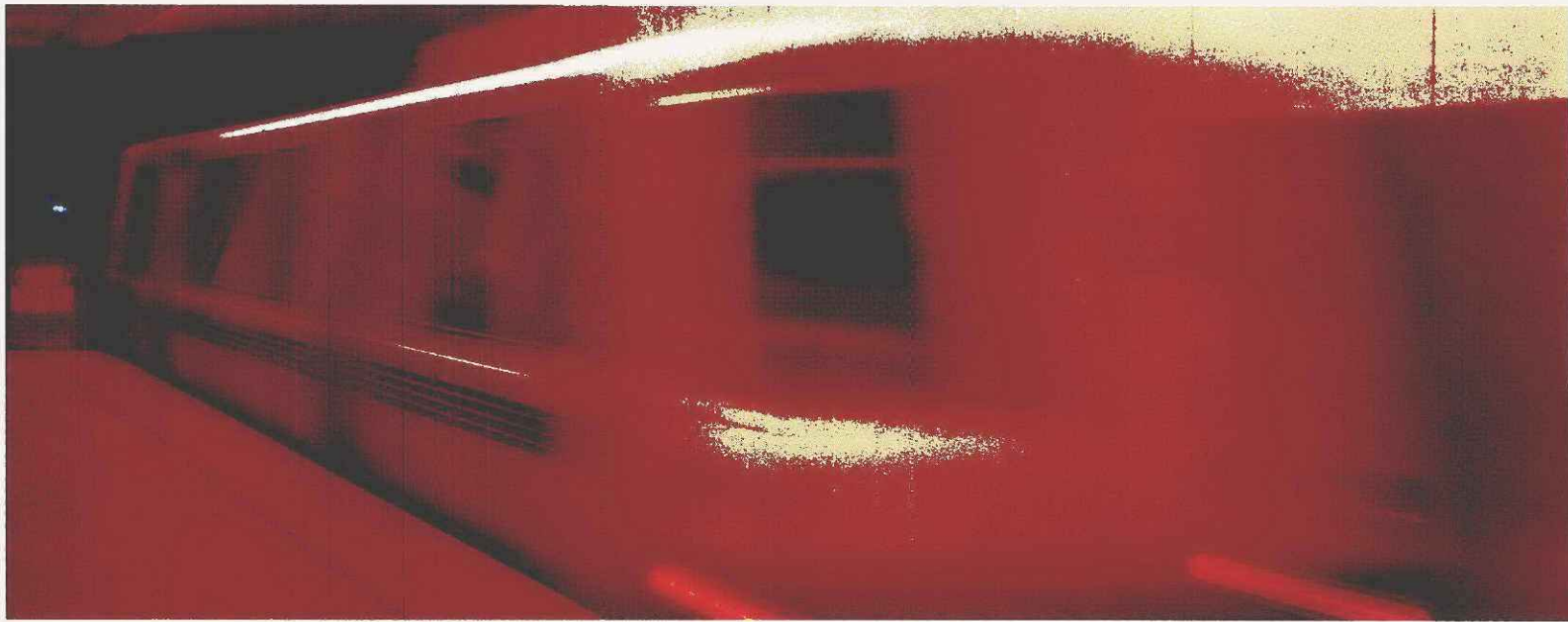
Mr. Vogel stresses that the longer the injured worker remains off the job, the less likely he is to return. In fact, the chance of an employee who has been out for a year returning to work drops to perhaps as low as 5%, Mr. Vogel says.

In addition to responding quickly to back injuries when they occur, Dr. Richard S. Materson, president of the Chicago-based American Academy of Physical Medicine and Rehabilitation, suggests screening employees before they are assigned to potentially hazardous duties.

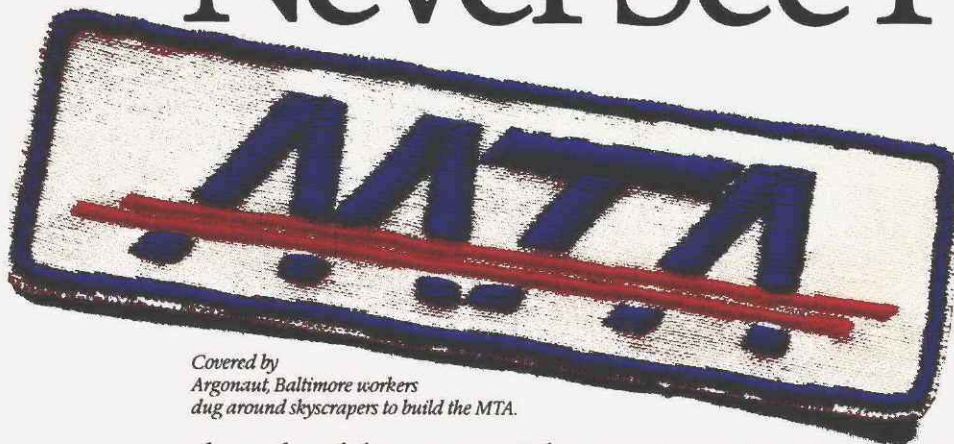
"An ounce of prevention is worth 1,000 tons of cure," he says.

To help decrease the likelihood of back injuries, Dr. Materson suggests that employers pre-screen workers to assure that they have adequate soft tissue flexibility and strength to perform strenuous tasks.

But if an accident occurs, Dr. Materson says it is important to  
*Continued on next page*



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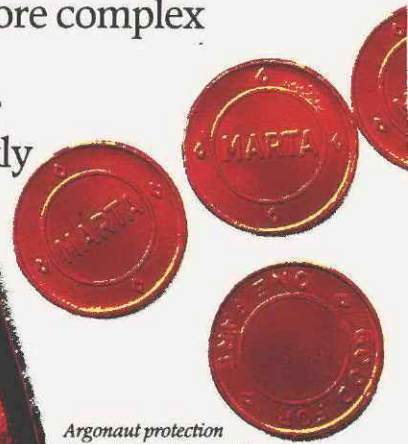
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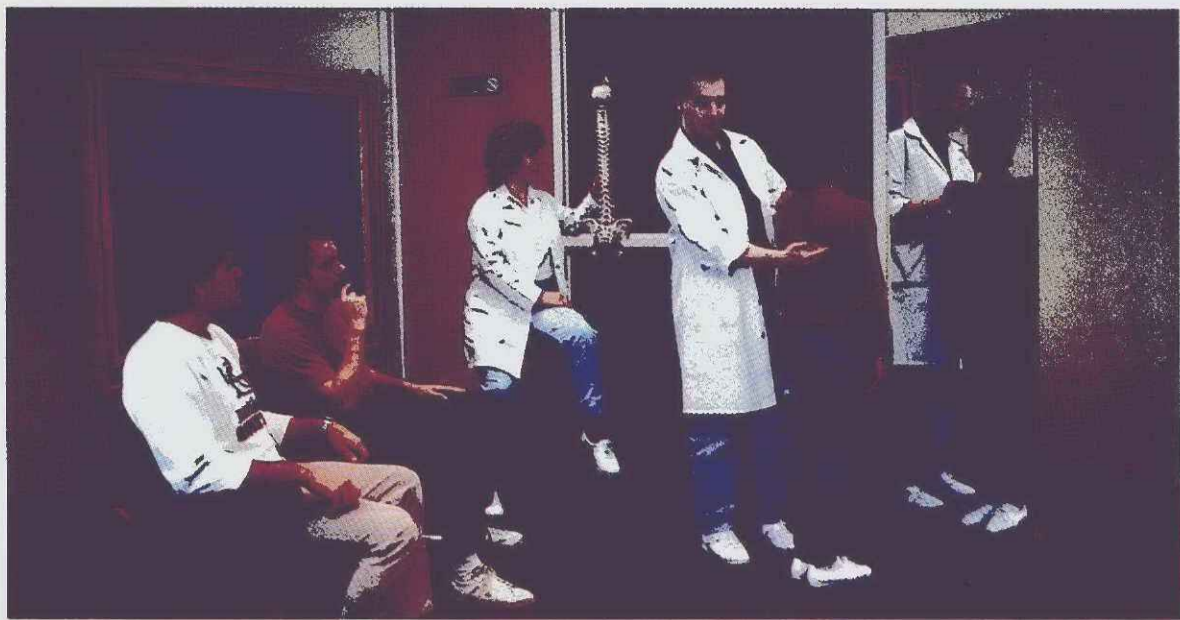


Photo: Liberty Mutual

A patient at Liberty Mutual's Back School in Boston receives instruction in proper posture.

Continued from previous page

"get a physician who enjoys taking care of patients with back injuries."

The physician must take the time to thoroughly review the patient's back-injury history, to search for patterns and to ascertain that the particular injury does not stem from a pre-existing condition, says Dr. Materson, who teaches at Baylor University's College of Medicine in Houston in addition to maintaining a private practice.

"You need somebody with a computer on his shoulders to go from A to Z," someone who will examine the patient's psycho-social history, Dr. Materson says. The physician needs to uncover any workplace, financial or personal problems that may produce stress and tight muscles that exacerbate back injuries.

Most important, the physician should remember throughout the process that he is dealing with a

person, not a wound.

Employers and their workers compensation insurers should expect frequent reports on the progress of the back-injury patient to ensure that the case is being monitored adequately, Dr. Materson says. By "frequent," he stresses he does not mean monthly, but rather as close together as reasonable.

Dr. Materson says that 86% of the patients passing through his back injury rehabilitation program have returned to productive lifestyles. Still, he asserts that despite the crucial role of the physician, "the ultimate responsibility for getting better is the patient's."

Applying sports medicine techniques to workers' back injuries is one of the best strategies for getting employees back on the job, he says. Most patients, he says, have seen sports medicine in action when an injured professional athlete is taken from the field.

The hallmark of the technique, he says, is diagnosing the injury promptly and stifling the degree of injury as quickly as possible. If the injury does not include a fractured bone, uninjured parts of the body are not allowed to degenerate.

With sports medicine, Dr. Materson adds, a treatment program is developed for a particular injury, which is more effective than a gen-

**'The ultimate responsibility for getting better is the patient's,' Dr. Materson says.**

eral "cookbook" approach in which all back injuries are treated alike.

If a patient cannot return to his previous job, "I want him to think of other employment early on," Dr. Materson says. As part of rehabilitation, he tells his patients to analyze their assets.

"We don't want to know what's wrong," he explains. "We want to know what's right. It's far better to go to an employer with a list of what you can do than with a list of what you can't do," he says.

The use of athletic techniques to ease injured workers' return to work is the keystone of Wallbro Corp.'s rehabilitation program. The program was designed by Athletic Training services of Mount Pleasant, Mich., after a two-year study of Wallbro's workers compensation costs.

According to Don Tonti, director of human resources for the Cass City, Mich.-based manufacturer of small-engine fuel systems, Wallbro employees are referred to as "industrial athletes."

Under the direction of Martin Daniel, a certified athletic trainer, workers participate in an exercise program that helps strengthen muscles often injured in work accidents.

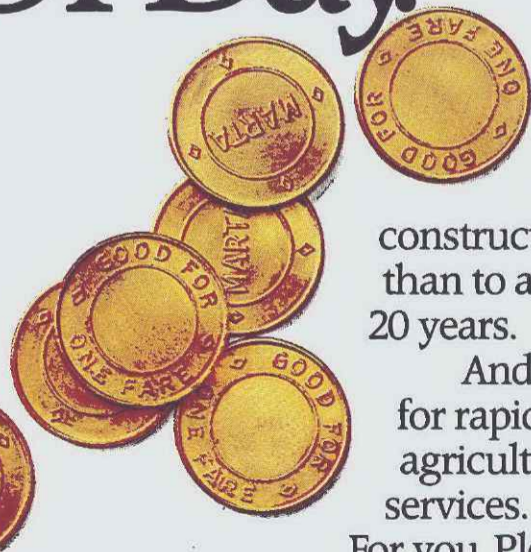
Roughly 70 employees pass through the training center's rehabilitation unit each week, most of them suffering from minor strains and sprains, according to Mr. Daniel. Although participation in the rehabilitation program is voluntary, so far no worker has refused to take part.

While figures on back injuries at the company are not available, the program reduced overall workers compensation costs by more than 55% in its first year of operation, Mr. Tonti says.

To illustrate the program's effectiveness, Mr. Tonti points to the case of a maintenance worker who suffered severe back pains. While two physicians suggested surgery to reduce the pain, the worker instead chose physical rehabilitation

Continued on next page

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## Rehabilitation

*Continued from previous page*  
at the center. After six months of exercises, weight training and whirlpool massages, the worker returned to his job full time.

Another advantage of the athletic training program, Mr. Tonti stresses, is that it allows employees to work during rehabilitation. The system, he says, is much more popular than the traditional approach of keeping workers at home until they are whole.

"Our people enjoy it a lot more," he says. "They're told up-front what their problem is and they're getting it taken care of. Their intent is to get back to work."

Another Michigan corporation's rehabilitation program is committed "to keep our injured workers working" says Libby Child-Laskowski, workers compensation manager for Grand Rapids, Mich.-based Steelcase Inc. And, meeting

that commitment can mean job modification or even job creation, Ms. Child-Laskowski adds.

Some workers suffering back injuries who cannot return to their previous jobs are transferred to the company's materials reprocessing department, where they do very light work such as cleaning, sorting and counting gloves. The job, which was formerly contracted out, provides transitional employment for as many as 20 workers at a time, Ms. Child-Laskowski says.

"Employees are a very important asset. We want to keep them functioning," she says.

Speed is of the essence if any employee is to be kept functioning, asserts Dr. David Lehrman of the Lehrman Back Center in Miami Beach.

The best way to deal with back-related injuries is to put the accident victim into a program of proper treatment within a week of the incident, he says. Ideally, "I'd like to get him the day of the accident."

Like Mr. Vogel, Dr. Lehrman stresses that the longer a patient is allowed to remain out of work, the less likely he is to return to work.

"Bed rest and pills is not the answer," Dr. Lehrman says, because allowing patients to remain at home feeling sorry for themselves accomplishes nothing. Such patients, he says, are not only less likely to return to work but are more likely to file protracted workers compensation claims.

"The issue isn't getting him back to work," Dr. Lehrman says. "It's keeping him back at work."

Dr. Lehrman says that about 70% of the long-term workers compensation patients treated by his clinic return to work and stay on the job. These long-term patients, who have been out of work for more than a year, are the most difficult group to treat, he says.

If treatment were to begin within the first week of the injury, Dr. Lehrman believes the success rate would exceed 90%.

Rehabilitation must deal with both the physical and emotional aspects of the injury, and traditional back-injury treatment often fails to take this into account, Dr. Lehrman says.

He advocates retraining and re-educating patients to help assure that back problems neither grow more serious nor recur.

While some injuries do require surgery, Dr. Lehrman says: "There's too much cutting going on."

In addition, Dr. Lehrman stresses that no matter what course of treatment is taken, treatment cannot stop with the patient's release from a rehabilitation facility. Patients who receive care at Dr. Lehrman's center continue the rehabilitation process after their return to work through a daily regimen of exercises.

Looking at the patient as a whole, rather than as just an extension of an injured back, also is part of the therapy at the new Taylor Spine Institute in Delano, Calif.

Dr. Allen C. Chamberlin, the institute's executive director and chief surgeon, advocates a team approach involving spine specialists, psychologists, nutritionists, therapists and others in promoting back-injury recovery.

But, rather than dubbing his approach "holistic," Dr. Chamberlin prefers to call it "high-tech."

The fragmentation of back-injury treatment services has hindered rehabilitation, Dr. Chamberlin says. Under his system, various specialists collaborate on an individualized recovery plan through the use of computers. The use of a computer-linked team of experts, he says, provides a more objective diagnosis than do traditional methods.

*Continued on page 26*

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# Rehabilitation

Continued from page 24

The institute is based on the premise that the best way to treat back injuries is through placing "expertise under one roof with an emphasis on concerted effort," he says.

Dr. Chamberlin, an orthopedic surgeon, views surgery as the last resort, saying that at least 80% of work-related back injuries can be remedied without it. Instead, he favors "putting the patient in charge of his back pain" through cognitive therapy.

The therapy uses education concerning anatomy, physiology and nutrition, combined with regular body conditioning, to give the patient a "new mind set" that will decrease the chances of back injury recurring, he explains.

He estimates that 85% to 90% of those treated at his facility will return to what he called "productive lifestyles."

Part of the new mind set instilled at Liberty Mutual Insurance Co.'s back school in Boston involves "an attempt to remove the mystery surrounding the whole problem of back pain," says Reginald K. Wakefield, the insurer's manager of rehabilitation and medical services.

The back school is part of the Liberty Mutual Medical Service Center, which seeks to rehabilitate workers with a variety of injuries.

Mr. Wakefield points out that 90% of workers who suffer back injuries return to their old jobs within eight weeks.

Liberty Mutual's national network of rehabilitation nurses recommend the remaining 10% attend the once-monthly, weeklong back school. Seventeen medical and rehabilitative personnel work with these employees, most of whom have been out of work for one to six months, he explains.

Eight or nine patients at a time participate in a program based on the work of Dr. Alf Nachemson, a Swedish orthopedic surgeon, in which they are taught to cope with back pain so they can return to work.

The back school patients also undergo a conditioning program of detailed job simulation, such as driving a truck on a hazardous road. During the simulation, rehabilitative and medical personnel monitor the worker's reactions and suggestions for modifying his or her behavior or the environment to reduce back strain.

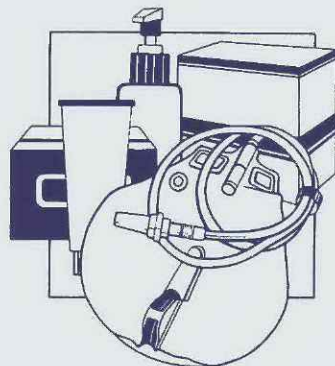
Mr. Wakefield says that although there are no separate statistics for the back school, the Medical Service Center has an impressive record of rehabilitating injured workers. Six months after the end of the calendar year in which they receive treatment at the center, 74% to 77% of those treated are back on the job, enrolled in an active vocational rehabilitation program or otherwise have had their cases resolved satisfactorily, he says.

Dr. Materson advises employers to put themselves in the worker's position when handling back injuries: Treat those with back injuries as you would like to be treated if you were in the same situation. That way, he says, both employers and employees feel better about themselves and the recovery process, which, in turn, proceeds quicker. ■



At Liberty Mutual's Back School, each day begins with morning exercises. The goals of the Back School are 'to teach self-management, increase the level of function, promote return to work and prevent future back-related problems.' (Photo: Liberty Mutual)

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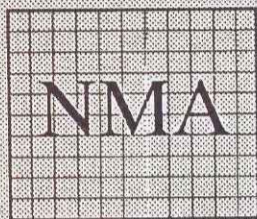


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# Back injury prevention eases strain on corporate budgets

By KARI BERMAN  
and DEBORAH SHALOWITZ

NEW YORK—Employers can alleviate strain on their budgets from back injuries by offering prevention programs aimed at reducing the frequency and severity of back-related claims.

Prevention programs can reduce employers' overall work comp claims by as much as 64%, consultants say. And, they say employers that have adopted programs designed specifically to prevent back injuries have reported savings of up to 90%.

Employers can achieve "a 3% to 19% increase in productivity and a reduction in total back injuries of up to 78%," said Charles Anderson, vp of engineering and ergonomics at Back Systems Inc. in Dallas.

Nancy Selby, president of the Spine Education Center Inc. in Dallas, reports that employers with a comprehensive back injury prevention program can realistically expect a 25% decrease in back injuries and a 50% decrease in lost work days.

"In some companies, we are seeing a 90% reduction in expenditures over time," she added.

"A back injury can cost a company \$500,000. To combat the costs, companies have to identify and treat the stressors before the injury occurs," says Dr. Clifford M. Gross, president of BioMechanics Corp. of America, an ergonomics firm in Deer Park, N.Y.

Back Systems and Biomechanics help employers avoid workers comp claims by reducing employees' muscle stress.

Although some workers have a greater risk of sustaining a back injury than others, back injuries can strike anyone at any time and preventive measures should be implemented in all workplace environments,

according to medical and risk management experts.

"Back injuries do not just occur in jobs that require transporting heavy loads," reports Dr. Gross, adding that employees who work at computer terminals all day often sustain back injuries.

Ms. Selby agreed: "It is important to realize that back injuries are not just related to jobs that involve lifting. Any movement done repeatedly the wrong way in any job can result in damage to the back."

To reduce the risk of back injuries, Dr. Gross recommends that employers:

- Teach office workers correct posture. Many workers do not know how to sit properly and unknowingly put additional stress on their backs, Dr. Gross explains.

- Encourage workers to do warm-up exercises. "Like an athlete, office workers have to warm up before they start making demands on their body," says Dr. Gross.

- Adjust employees' work stations. Risk of back injuries can sometimes be reduced by altering a workers' chair or desk.

"In one situation, we found lighting to be a problem, so we gave employees a light meter to measure the amount of illumination on the screen," Dr. Gross said, explaining that the employees were straining their backs to properly see computer screens.

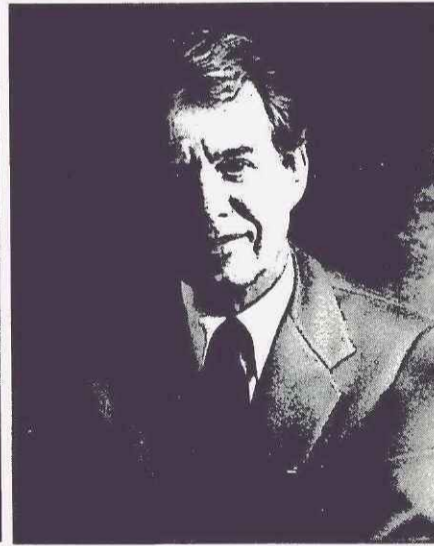
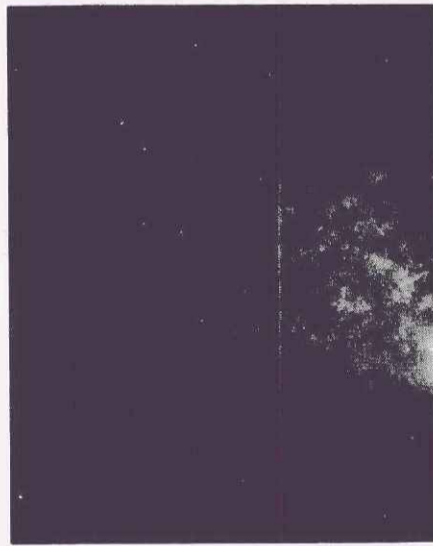
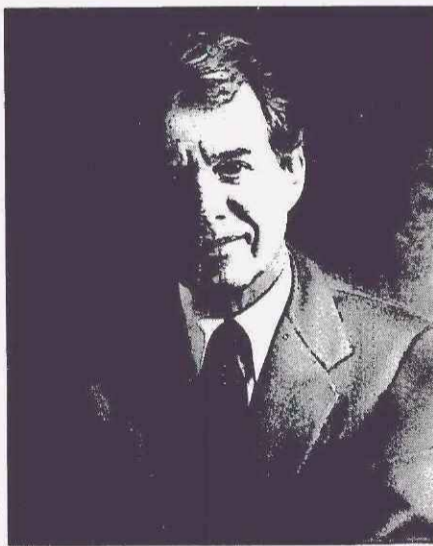
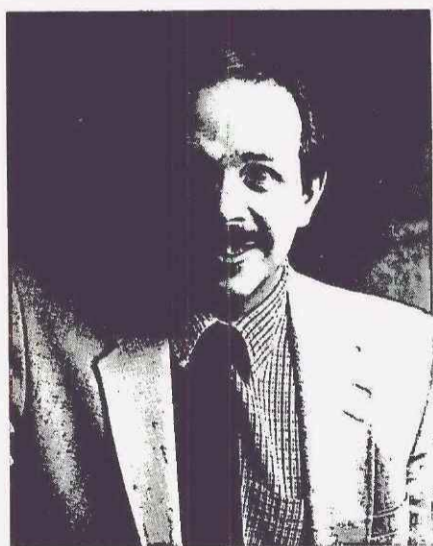
Wrist and back supports also can help reduce muscle stress at a desk or computer terminal, he said.

"We assess the specific job demands on strength, endurance, posture and movement. Then we advise the company on the best ways to reduce the probability of back injury," says Mr. Anderson of Back Systems.

*Continued on next page*

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Continued from previous page

Mr. Anderson recommends three ways to reduce on-the-job back injuries: training, ergonomic engineering and employee screening.

Training programs include fitness regimes and morning stretches as well as instructing employees on correct lifting techniques, he said.

"The best preventive measure for back injuries is to be aware of how to carry out a task," agrees Dr. Johnathan Kleefeld, assistant professor of radiology at Harvard Medical School and a neuro-radiologist at Beth Israel Hospital in Boston. "If you are lifting, know how to do it with the least likelihood of causing injury," he says.

The incorporation of ergonomic engineering concepts such as re-packaging a heavy load in a way that reduces the stress put on the back is another method of reducing work-related back injuries, he said.

"Sometimes we will advise a company to select chairs in relation to the task," Mr. Anderson said. "A person at a computer has different needs than someone at a drawing board. Ergonomic chairs are very effective for people who sit all day and have produced up to 15% productivity increases in clerical work."

Screening new employees to be certain they are capable of carrying out stressful tasks "is an effective measure for companies where physical endurance is a necessity," explains Mr. Anderson. "We advise both strength and endurance testing. If they can't do the test, then they can't do the job."

By implementing an employee screening program for nurses aides at the 279 nursing homes it operates, Philadelphia-based ARA Services Inc. has been successful in preventing on-the-job injuries, according to James McNamara, manager of corporate loss prevention and cost control.

ARA uses six tests including partial push-ups and partial sit-ups to screen job candidates to see if they have the physical capabilities necessary to be a nurses aide.

Since ARA started the program, about 20,000 potential job candidates have taken the test, according to William Emery, corporate risk management supervisor. About 9% of applicants do not pass, he said.

By combining the employee screening program with a training program and a loss allocation system that charges workers compensation claims to the individual nursing homes, ARA nationally was able to reduce accidents in fiscal 1985 by 15% and claims by about 5% from 1984. In fiscal 1986 accidents declined 3% and claims dropped 6% from 1985 (BI, April 14, 1986).

W.R. Grace & Co., a New York-based diversified manufacturer, also has been able to reduce the cost back injuries, which were costing the company close to \$1 million annually, according to Robert Marion, safety manager for Grace Specialty Chemical Co.

By investing in machinery to lift 60-pound and 100-pounds sacks that employees had been lifting, Grace was able to reduce its exposure to back-related claims.

"Back injuries are the single most expensive injury that we have, we are always looking for ways to reduce the risks," Mr. Marion said.

Although he did not have any statistics on the effect of the new machines, "We are confident that the steps we are taking will help reduce the costs of our claims."

The Canada Postal Corp. in Ottawa reduced its exposure to back-related workers comp claims by designing new ways for postal workers to carry the mail, said Donald Lord, manager of safety/hygiene.

He said back claims accounted

for 15% to 20% of the Postal Corp.'s workers comp claims.

"We are testing new mail bags that hang in either the front or on the sides so that the hips take the weight off of the back," Mr. Lord said. The front pack has been successful for letter carriers who now report being able to carry heavy loads without feeling discomfort.

Letter sorters and other workers experiencing back pain also have been instructed on how to lift and move properly, he added.

While Mr. Lord said there are no statistics available on the effect of the new bags, he said, "We are al-

ways testing new bags in an effort to reduce the number of injuries to our letter carriers."

Sysco Corp., a Houston food distributor, has reduced back-related injuries by using Back Systems' pre-employment screening methods, said Bill Bageant, director of insurance and loss control.

"After unsuccessfully trying to implement back injury prevention programs, we contacted Back Systems and, by using their pre-hiring testing methods, we have had a 400% return on investment," according to Mr. Bageant.

Continued on next page

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# RLI UPDATE

## Consolidated Statutory Financial Information

### RLI Insurance Company and Mt. Hawley Insurance Company

#### STATUTORY SURPLUS

(000 Omitted)

1987 — \$61,783\*  
1986 — \$53,063  
1985 — \$37,037  
1984 — \$16,739  
1983 — \$12,238  
1982 — \$11,084

#### COMBINED RATIO

1987 — 77.2\*  
1986 — 84.1  
1985 — 99.7  
1984 — 97.0  
1983 — 94.9  
1982 — 99.1

5 YEAR  
COMBINED RATIO: 92.9  
(1982-1986)

#### ASSETS

(000 Omitted)

1987 — \$157,388\*  
1986 — \$159,568  
1985 — \$105,993  
1984 — \$ 48,719  
1983 — \$ 35,156  
1982 — \$ 36,171

#### LOSS RESERVES

(000 Omitted)

1987 — \$50,402\*  
1986 — \$46,243  
1985 — \$22,784  
1984 — \$ 9,150  
1983 — \$ 4,985  
1982 — \$ 4,455

\*Six months results ended June 30, 1987

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## Injury prevention

Continued from previous page

In previous years, back injuries comprised 25% to 40% of Sysco's workers compensation claims, costing the company more than \$2 million annually, he said.

"We are pleased with Back Systems and the results we have had. I believe that we will be able to reduce the amount of back injury claims significantly," he said.

At Mead Corp. in Dayton, Ohio, work-related injuries were reduced through a two-pronged program of purchasing more machinery and training employees.

Doug Marcero, corporate manager of health and safety at Mead, said the company developed the program to combat rising workers comp costs. Back injuries alone were costing the company \$250,000 to \$1 million a year, he said.

One facet of the plan eliminated many of the lifting tasks that workers perform through increased use of equipment and machinery, said Mr. Marcero.

For example, instead of manually transferring heavy cartons from a table to the floor or vice versa, Mead now uses a "scissors table," which rises and lowers the cartons to different heights.

The other facet of the program is training workers on proper lifting techniques. Mead produced videotapes, slide/tape shows and brochures to train employees.

Because the program has only been in effect for about a year, Mead doesn't have figures on any cost savings for the company, Mr. Marcero said. However, he said both the company's claims and costs are decreasing. Furthermore, the cost of the program—\$80,000—is only equivalent to "a couple of bad back claims," so even a small savings initially would make the whole thing worthwhile, he added.

In an effort to create a healthier work force and reduce workers comp claims, Armonk, N.Y.-based International Business Machines Corp. started a health promotion program in 1981 which reimburses employees and family members for a variety of classes taken at local health clubs or YMCAs.

In addition, in the New York area, a "Plan For Life" catalog alerts employees about classes, including healthy back, exercise, and strength and endurance training, a IBM spokeswoman said.

Unions are also taking an active role in preventing workplace back injuries, according to James Ellenberger, assistant director of the AFL-CIO's department of occupational safety, health and Social Security in Washington.

Although "the responsibility of training workers properly for the task at hand is the employer's," some unions are voluntarily conducting their own safety training programs, he said.

For example, many of the construction trade unions have apprenticeship programs that include instructions on how to avoid injuring one's back on the job.

Workers compensation insurers are responding to policyholders' needs to reduce back injury claims by offering ergonomic advice.

Wausau Insurance Cos. of Wausau, Wis., encourages companies to take advantage of its "Supervise to Prevent Back Injuries" program, said Arleen Hayes, manager of occupational health services. The program, which was implemented in 1985, teaches supervisors how to prevent back injuries.

The supervisor receives a kit that includes a video, printed material, posters and brochures for employees. "We also give them advice on how to evaluate the ergonomic hazards of the workplace and make proper modifications to reduce the risks," Ms. Hayes said.

By implementing the Wausau program, MagneTek Universal

Manufacturing Co. in Bridgeport, Conn., was able to significantly reduce its exposure to back-related workers comp claims, says James Dunn, manager of industrial relations.

"Back injuries were among the highest workers compensation claims. Now, our lost work days have decreased substantially, and this year we have not had any

claims related to backs," he said.

Boston-based Liberty Mutual Insurance Co.'s back injury prevention program incorporates three techniques: job design, job placement and employee training, according to Stover Snook, project director of ergonomics at the Liberty Mutual Research Center in Hopkinton, Mass.

"We try to guide companies or

how they can redesign jobs and reduce back problems. We find that if you can design a job that 75% of the general population can do, then you can reduce back injury by one-third," Mr. Snook explained.

Liberty Mutual also helps employers reduce on-the-job injuries by using a series of medical and strength tests to help hire and place individuals in the most ap-

propriate jobs, he said.

Mr. Snook reports that the most successful prevention programs are those that are multifaceted and attack the problem from different directions. "A company can't offer a warm-up exercise program and expect it to work on its own. There has to be a variety of measures working together in order to get results," he said. ■

# Bring your Workers' Comp medical costs into FOCUS... and save tens of thousands of dollars



# Equipment designed to prevent back injury

By KARI BERMAN

Employers looking to reduce workplace back injuries can purchase a hodgepodge of gadgets, devices and mechanisms to get the

job done, with prices ranging from very little to tens of thousands of dollars.

Although independent research has not been collected to support the effectiveness of these gadgets,

"if they motivate individuals and psychologically help them believe that they're getting better," they can't hurt, says Stover Snook, project director-ergonomics at Liberty Mutual Research Center in

Hopkinton, Mass., a unit of Liberty Mutual Insurance Co.

Strength training is probably the most important element in preventing back injuries, points out Ken Hutchins, an engineer at Nau-

tilus Sports/Medical Industries Inc. in Dallas.

"Most back injuries could be prevented if people are instructed on how to move and if muscles are made stronger," he stated.

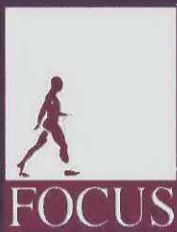
Nautilus makes a low-back exercise and training machine, called a trunk-extension machine, for both commercial and home use, Mr. Hutchins noted.

The home version of the machine costs about \$500. Nautilus is working on producing a videotape to accompany the home machine.

The commercial version of the machine costs about \$2,500 and is designed to withstand heavy, long-term use of up to several hundred people per day, he said.

Mr. Hutchins "strongly" recommends that people planning to invest in the commercial low-back machine attend a two-day seminar in Dallas on how to use the machine. The next seminar will be held in November and the charge is \$125.

BioMechanics Corp. of America, a full-service ergonomics firm in Deer Park, N.Y., has created the Pocket Ergometer, a portable bio-feedback device that beeps when the individual is sitting incorrectly



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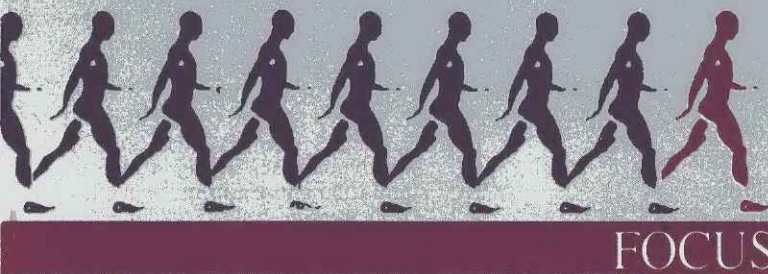
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**If devices motivate and help people believe they're better, 'they can't hurt,' says Stover Snook.**

and continues the signal until the posture is corrected. Pocket Ergometers cost \$179.95 each.

In addition to the Ergometer, BioMechanics recommends its Personal Back Support as an injury prevention tool for those whose jobs entail manual lifting.

"It is designed to support the lumbar region of the spine, minimizing spinal twisting that can occur during lifting," explains a BioMechanics Corp. spokesperson.

The Back Support, which costs \$24, is a wide, lightweight and flexible belt, with adjustable Velcro straps, allowing employees to wear it for long periods of time comfortably.

BioMechanics also has developed a three-minute morning video exercise routine that workers can quickly perform at their desks to prepare for the strains of the day.

"It is designed to increase strength, flexibility and fatigue resistance. We also advise using a hand gripper to strengthen the hand," says Dr. Clifford M. Gross, president of BioMechanics.

The video is part of Office-Plan, a complete employee training program that includes training manuals, a light meter, biofeedback monitor, 25 slides and 3 video cassettes. The complete Office-Plan sells for \$1,500.

BioMechanics's also has designed an ergonomic chair—which has not yet been marketed—that mechanically aligns to the individual's spine after inserting a coded access card, according to Mr. Gross.

Darrell Heppner & Associates Inc., a San Leandro, Calif.-based risk management services firm, offers a different type of back support called the Compvest Back Support.

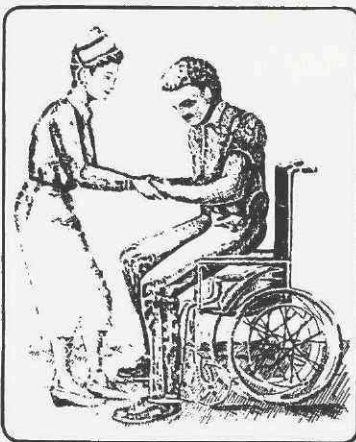
The nylon and Velcro device consists of two shoulder straps that cross in back and are attached to an adjustable belt that fastens around the waist. The device provides lower back and abdominal support, reducing the incidence of

Continued on next page

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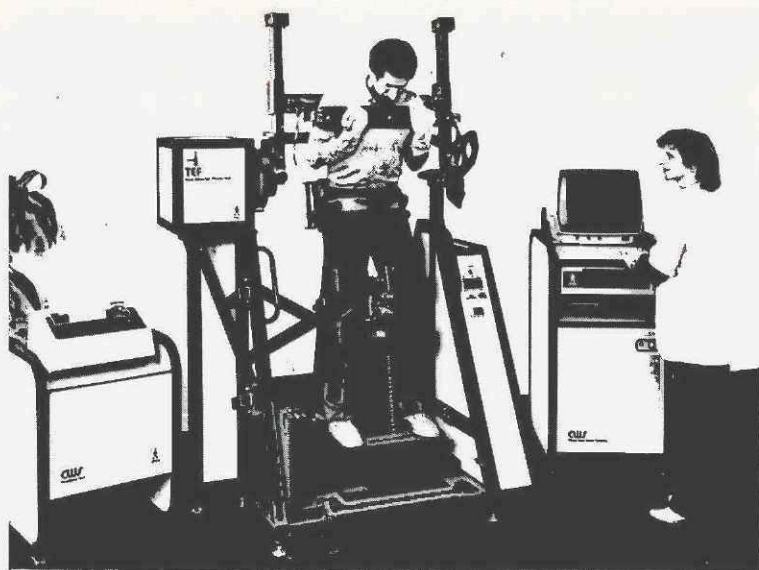
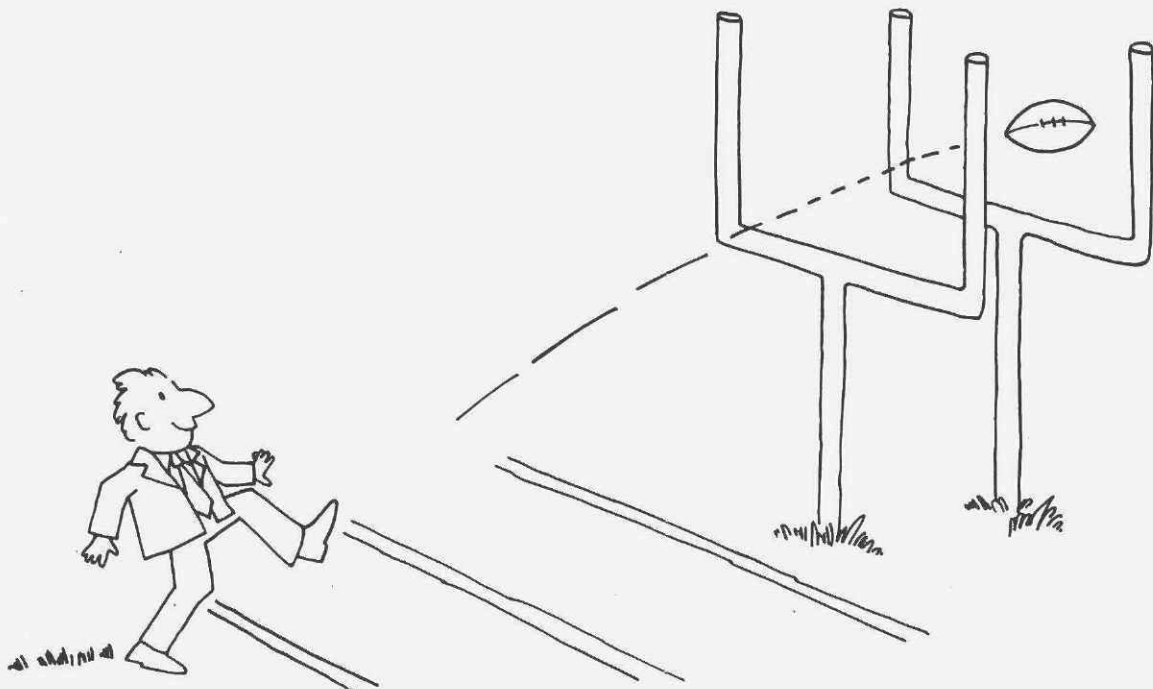


Photo: Cybex Back Systems

The Cybex Trunk Extension/Flexion Testing and Rehabilitation System includes a computer terminal and color graphics printer.

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## Devices

Continued from previous page  
 back injury while increasing productivity and lowering workers compensation costs, said Darrell Heppner, president of the firm.

"In some cases, it becomes the employee's personal protective device like a hard hat," Mr. Heppner explains. "We have found that it has significantly lowered our clients' back injury costs, reducing the number of injuries and their severity by 40% to 80%."

The back support is available on a consignment program that allows companies to try two vests for two weeks before buying the product. Each vest costs \$98.98, with price reductions for larger orders.

In addition, Heppner & Associates markets the Portapillow, an inflatable pillow designed to di-

**'Most back injuries could be prevented if people are instructed on how to move,' says Ken Hutchins.**

minish lower back stress for people who sit for long periods of time.

The pillow can be adjusted for individual needs by placing it in the small of the back and inflating or deflating it until comfortable. Each pillow costs \$7.95.

For companies that can afford to purchase more expensive computerized equipment, Cybex, a division of Lumex Inc., a back testing and exercise equipment manufacturer in Long Island, N.Y., offers a Trunk Extension/Flexion Testing and Rehabilitation System.

The system, which includes a clinical work station computer and a color graphics printer, is used to test and rehabilitate the trunk muscles involved in lifting. It also is used both to measure and increase lower back strength.

As the worker stands in the machine and moves a bar in different directions, the attached computer measures the force, power and endurance exerted throughout the range of motion, assessing the individual's capabilities. The complete system costs \$49,900.

Also available through Cybex is LIFTASK, Lifting Capability and Training System, created for pre-employment screening and task simulation and training.

The treadmill style machine requires the individual to squat and lift the attached bar, while the computer adjusts the resistance and measures the individuals' ability to perform the task. If used regularly, it can help improve the function of the back as well as all other body parts involved in lifting. LIFTASK costs \$39,670. ■

# Back injuries cause many comp claims

By LAURA MAZZUCA

Back injury claims make up almost one-third of all workers compensation claims filed, according to figures supplied by nine state workers compensation bureaus.

The states—Arkansas, California, Florida, Maine, Michigan, Minnesota, New Jersey, New York and Pennsylvania—were chosen by *Business Insurance* because they represent a geographic cross-section of the country. The states also vary widely in back injury administration.

While some states specifically break out figures for back injuries, others may include such claims in categories such as injuries to the "trunk," which includes the abdomen, back, chest, hips and shoulders.

BI also attempted to survey Illinois, Oregon and Texas, but those states do not maintain separate figures on back injuries.

The following is a breakdown of state workers compensation bureau statistics on claims paid and general compensation procedures for back injuries.

## Arkansas

Back injuries comprised 11,339, or 32.8%, of the 33,625 bodily injury claims filed in Arkansas for the reporting period ending June 30, 1986, the state Workers' Compensation Commission reported.

A breakdown of expenditures for back injury claims was not available, but the state reported that total expenditures for workers compensation cases closed in 1985-1986 amounted to \$89.6 million including \$26.2 million in compensation benefits and \$13.3 million in medical expenses.

Total expenditures in 1984-1985 were \$91.8 million, with \$28.4 million in compensation benefits and \$17.1 million in medical expenses.

Injured workers in Arkansas receive a maximum weekly benefit of \$189 and a minimum weekly benefit of \$29 for up to 450 weeks.

The state relies on medical reports from the employee's physician for evaluation of his physical condition. Rehabilitation is not mandatory under Arkansas law.

Arkansas has recently undertaken a \$100,000 safety study program to address the prevention of workplace accidents.

## California

In 1986, back and spinal cord injuries topped the body-part injured list in the nation's most populous state, comprising 22.3% of all workplace disabilities, according to the California Workers' Compensation Institute.

Total medical expenses and workers compensation benefits amounted to \$2.7 billion, with temporary disability compensation benefits currently capped at \$224 per week.

Back injuries made up 90,517 of the 406,683 disability cases reported during the period.

Under current California guidelines, the evaluating physician must determine the effect of the injury on the employee's ability to

work and how it affects the worker's efficiency on the job. Because this method is not medically objective—especially in the case of back injuries—there are many disputed claims, the institute says.

In 1986, every ninth workers compensation claim—but more than 80% of the state's permanent disability claims—was litigated. Back injuries triggered 45% of all litigated claims. Each litigated claim cost an average of \$5,078, with a total cost of \$985 million in 1986.

California in 1975 was the first state to adopt mandatory benefits for vocational rehabilitation. This accounts for 15% of the total workers compensation costs. Mandatory rehabilitation benefits also increased state workers comp insur-

ance rates an average of 2.7% to pay for the benefit and boosted litigation costs, because claims are frequently disputed, according to the bureau.

In an attempt to cut down on litigation, state regulators are tightening the evaluation process to more strictly adhere to objective medical findings. Especially targeted are back and psychological claims, which together accounted for 40% of the incurred losses for California workers compensation insurers in 1986.

## Florida

Back muscle injuries made up 15,281, or 17.9%, of the 85,563 in disability claims reported in Florida in 1985, the most recent year for which statistics are available

from the Florida Division of Workers' Compensation.

Medical disbursements for back injuries exceeded \$43 million, or more than 10% of the \$416 million in total workers comp claims costs,



while wage-loss compensation for back injuries amounted to \$45 million. These figures include both closed claims

and claims reserves as of June 30, 1986.

A maximum of 26 weeks of rehabilitation is mandated in Florida if the worker is unable to resume working at his previous job and

*Continued on page 42*

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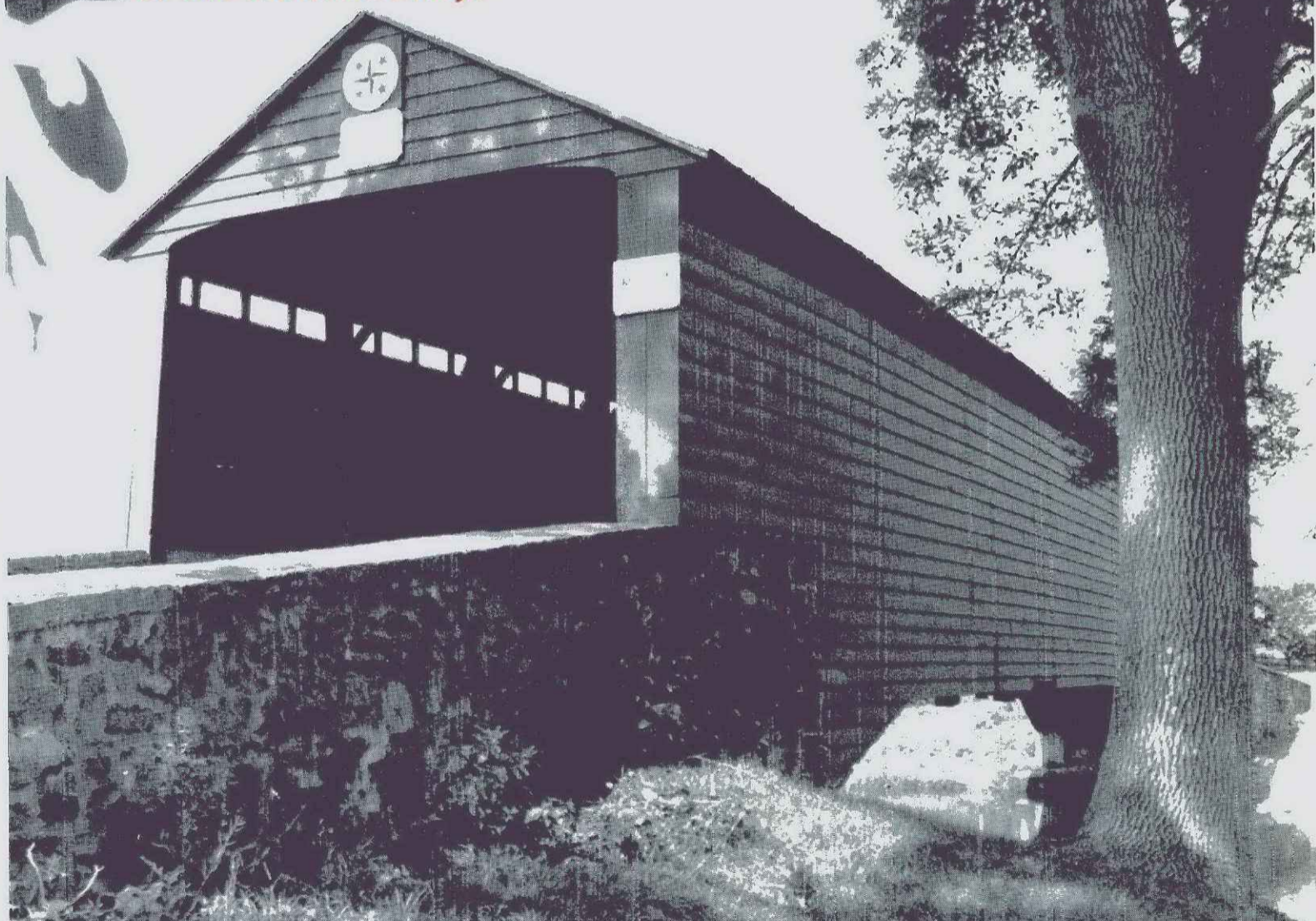
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# REHABILITATION

By David R. Netherton  
and David B. Connell

## Detailed analysis needed to make sound judgments

**B**ETWEEN A WORKER'S disability and his or her rehabilitation lies the demand for experienced management.

A complete picture of the worker's current and expected level of functioning is the single best bridge between injury and a successful return to work. The bridge, however, is often makeshift, incomplete and weak. It is always the result of a professional's own judgment.

The need for accurate and well-founded judgments is always present, and those critical points for which the experienced mind looks can easily be misinterpreted, forgotten or overlooked. Strong cases can become old cases. Familiar cases become complicated and very expensive. Without the essence of the best sort of experience, the individual treatment of each employee's case is derived from an unfortunately limited perspective.

During the short-history of rehabilitation, coming to some understanding about the functional level of a disabled worker has alternately been the province of the rehabilitation contractor, the state agency, the independent professional evaluator, the disability claim management company and, of course, the insurer paying the claim. In some instances, companies have set up procedures to make very quick decisions about closing out workers' claims—regardless of result—at the earliest possible moment. In practice, however, developing a comprehensive picture of the claimant's functioning in a vocationally directed way is critical to determining appropriate and timely action.

Yet, it is nearly impossible to recreate the thinking of the examiner because of the need for individual, skilled judgment. Why one set of services is ordered rather than another is based on this pivotal assessment. However, the logical basis for these decisions is often hazy.

Some dominant feature in a case usually suggests the path to be taken. The quality of this assessment and the resources available to the decision-maker determine the course. But, before the individual plan for vocational rehabilitation can be laid out, some version of a functional assessment is needed.

Before vocational management of a claim, there must be functional assessment. Before case assignment and contracting, there must be functional assessment. Before transferable skill programs, job matching and employer negotiations—even before selection of a case for rehabilitation services—there is the clear need for a comprehensive functional assessment.

Uniform functional evaluation of worker disability claims on a consistent and standardized basis produces a number of benefits. It can clarify an injured worker's limitations, taking the worker out of a diagnostic and toward a vocationally relevant picture of his capabilities. Important secondary impairments are often identified. And, it is a first step to planning rehabilitative services for the claimant.

The connection with direct service planning has brought an increasing number of rehabilitation professionals to the field of functional assessment. Recently, several systems have been tested in assessing injured workers' function through diagnostic interviews, tests of physical abilities and endurance and other measures of residual capacity. The idea in each method has been to systematically organize individual information about those functions that are most important to rehabilitation and vocational success.

Abt Associates' Functional Assessment Rating System, one of these systems, is a microcomputer-based interactive program that provides direct feedback on the functional limitations and vocational strengths of an injured worker, offering a series of functional profiles that compare the claimant with a data base made up of thousands

of former claimants who have been successfully rehabilitated.

Claimant information is first entered into the system according to the employer's or insurer's own

procedures. The system then prompts the user through an interactive program, organizing the vocationally relevant information about the disability and producing a comprehensive measurement of the worker's strengths and limitations.

The functional assessment component of FARS is based on two instruments.

The Functional Assessment Inventory (FAI) is a rating scale consisting of 30 behaviorally based items assessing functional limitations, 10 items highlighting strengths and two global ratings of severity of disability and prediction of employment ability.

The Life Functioning Index (LFI) is a nine-scale instrument that produces a "snapshot" of the worker's status in major life functioning areas, such as vocational, educational, self-care and mobility scales. These scores provide an indication of the consequences of the functional limitations assessed by the FAI.

Following data entry, the functional profile is computed. Using statistical

algorithms based on extensive research, seven functional areas are produced from the FAI:

- Adaptive behavior.
- Motor functioning.
- Physical conditioning.
- Communication.
- Cognition.
- Vocational qualifications.
- Environmental orientation.

Each score is scaled so that the national average is 50. The actual scores for the claimant are displayed along with a line graph. The user has the option of superimposing a variety of comparison profiles based on disability types and rehabilitation status. Comparison functional scores are available.

The claimant's information output is tailored to individual user specifications and procedures:

- Regularly recurring reports.
- Individual claimant information.
- Aggregated approver caseload with the capacity for comparisons within caseloads.
- A clear basis for outcome evaluation.
- The means for controlling costs and monitoring progress.

The process of gaining some historical perspective on a particular case—considering all the relevant data in a focused and organized way—is usually not an efficient one. Tradition holds that those borderline, complex or troublesome cases can be turned over to the counselor with the most experience. By entering a claimant called "Rick" on a functional assessment system, however, we can see the contribution that such a system can make to the rehabilitation professional's first decisions—those concerning case management, goals and expectations.

The user inputs Rick's disability, for example, as a specific category of chronic cardiac impairment according to modified diagnostic codes. The user also can take advantage of a system prompt for a secondary disability designated as mild to moderate depressive neurosis. In less than 15 minutes, the user has completed all items of the LFI, the FAI the 10 strength items and the final two overall ratings of severity and predictability of outcome.

After the factor analysis by the program, Rick's functional profile shows that the professional will want to address adaptive behavior, motor functioning and physical conditioning areas during rehabilitation.

Comparison profiles may then be selected. These show Rick's functional profile compared with a data base of several thousand claimants with known outcomes of rehabilitation. The

comparisons provide immediate feedback on precisely how Rick's profile compares with previous workers with not only the same diagnosis, but the same objective of returning to employment.

Once the program has computed comparison profiles, the client's ratings that fall a standard deviation away from the data base average are highlighted and immediately brought to the counselor's attention. In this case, Rick scores significantly lower in the adaptive behavior, motor functioning and physical conditioning areas than the average of all clients with the same disability type who were eventually re-employed.

However, Rick has a significantly higher vocational qualification rating based on his training, his experience and his occupation. Rick's overall level of severity is rated on a seven-point scale—ranging

from "slight" to "very severe"—as "moderately disabled." The probability of success of rehabilitation is categorized as "good," a 51% to 75% chance.

A client summary contains the functional assessment detail. This narrative often serves as the framework for the comprehensive rehabilitation plan. It describes in detail the specific limitations of the injured worker from a purely functional perspective.

For example, Rick's relatively low rating in the motor functioning category is actually made up from a series of professional judgments, involving capacity for exertion, endurance, anticipated loss of time from work and the stability of his condition.

We might have expected physical limitations in Rick's case, especially during the stabilization period, but the system has focused the counselor's judgment and pointed to those specific areas that will be the most useful in planning rehabilitation services, job modification, job placement and job negotiation.

The user can now work more effectively with Rick's employer, which has expressed a willingness to make the best use of Rick's energies and talent.

A number of additional products and utility programs are commonly available with these programs. For instance, a service planner helps interpret results, leading toward specific rehabilitation service alternatives, like medical evaluation; psychological evaluation; diagnostic maintenance; medical/surgical treatment; psychiatric treatment; mobility training; college/university

*Continued on next page*

**Uniform functional evaluation of worker disability claims . . . produces a number of benefits.**

**Before the individual plan for vocational rehabilitation can be laid out, some version of a functional assessment is needed.**

*David R. Netherton is senior analyst and David B. Connell, Ph.D., is senior associate at Abt Associates Inc. in Cambridge, Mass.*

# Airport shops pose special risks

By The Insurance Institute of America

The following question and answer are drawn from the curriculum for the Associate in Risk Management designation awarded by the Insurance Institute of America. They represent the type of question asked—and the possible answers—in one of the three examinations for the A.R.M. designation.

This month's material, taken from a May 1987 national examination, illustrates the various ways different types of loss exposures can be evaluated and controlled.

**Q:** Air Host Inc. operates restaurants and gift shops in several major airports in the United States and Europe, using its own personnel and occupying rented space. Air Host's risk management professional recognizes that hostage situations or other violent incidents at any of these airports may cause Air Host to suffer a variety of losses because of such violence or military activities, either of which may close an airport.

• Describe how to properly evaluate the losses Air Host Inc. may suffer from such an incident resulting from its exposures to property loss, net income loss or liability loss (including contractual liability).

• Before an incident occurs at any particular airport, what actions, if any, could Air Host Inc. take to minimize the severity of the property, net income and liability (including contractual liability) losses it might suffer in such an incident?

**A:** • Air Host's property loss exposure could best be evaluated on the basis of the replacement cost—or, possibly, replacement cost less depreciation—of all its property subject to damage. Perhaps the best way to determine this replacement cost would be through periodic inventories of pre-selected property at each of Air Host's locations.

## A.R.M. exercises

Air Host's net income loss exposure could best be evaluated as the combination of two factors: The daily decrease in revenues caused by a partial or complete disruption at each location, plus the increase in expenses likely to be brought on by the same cause.

Because of the nature of Air Host's business, it is highly likely that daily revenues vary greatly by location and by the season of the year. During the tourist season, for instance, revenues are likely to be up at the European locations. A careful analysis and correlation of these fluctuations would be a necessary part of the evaluation of the net income exposure.

An evaluation of Air Host's liability loss exposure would require an analysis of:

- ✓ The costs of potential judgments and verdicts.
- ✓ The costs of mounting legal defenses.
- ✓ The costs that could be involved in complying with any court orders.

In addition, the international nature of Air Host's operations could require that special attention be paid to workers compensation claims, depending on the relevant laws of the countries involved. Finally, an important element of the liability exposure could arise from the need to continue providing services despite a disruption of operations, depending on the language of the pertinent contracts.

• Fortunately, before a loss occurs there are a number of steps Air Host can take to reduce the severity or frequency of the various exposures it faces.

First, Air Host could reduce the value of the property it holds at each location. For example, the inventory maintained for each gift shop could be kept to a minimum for all items readily replenishable locally. Further, the remaining

inventory could be maintained away from the airport. Second, property with particularly high values could be singled out for special safeguards and treatment. Third, Air Host could employ duplication—it is possible that enough stock to keep all shops operational could be warehoused at a secure location in this country. Finally, the purpose of commercial insurance could be used to transfer the financial consequences of the property exposure.

The key to Air Host's net income loss exposure is its ability to continue operations and, thus, generate revenues. A contingency plan for each location could be developed, providing for an alternate place of operation, stock and necessary personnel and equipment.

If operations should be halted, continuing expenses could be minimized through layoffs of personnel and suspension of rent payments. Insurance would offset the financial consequences of the net income exposure.

Air Host's liability exposure could be crippling and difficult to control. One step the company could take to minimize the exposure would be to train all personnel in emergency procedures and in the best way to deal with injured members of the public. The company could also support and encourage airport security techniques. A review of Air Host's contracts, followed by the attempt to make them cancelable, could help reduce the company's contractual liability exposure.

Finally, commercial insurance would serve as a transfer mechanism for the financial consequences of potential liability losses.

The sample questions and answers used in this column are taken from the Associate in Risk Management designation curriculum of the IIA. For more information on the content of the A.R.M. program, write Dr. G.L. Head, Vp, Insurance Institute of America, P.O. Box 314, Malvern, Pa. 19355.

# Death benefit time limit ruled constitutional

An Alabama appellate court ruled that the state workers compensation law providing for payment in death cases only where the death results from an accident within three years was constitutional.

Watson G. Guy was injured and rendered totally disabled on April 12, 1980. He received temporary total disability benefits until his death on May 25, 1983. Thereafter, Mr. Guy's widow filed for burial and death benefits. The employer moved for dismissal. His widow claimed the three-year limitation law was unconstitutional. The trial court

*These abstracts were prepared by Cases Unlimited Inc. Copies of these decisions are available by sending a \$10 check payable to Cases Unlimited to Business Insurance, 740 N. Rush St., Chicago, Ill. 60611-2590. List the number for each opinion.*

## Legal briefs

dismissed her claim.

On appeal, Mr. Guy's widow claimed that no valid or logical justification of state interest could be found in cutting off a dependent's right to death benefits if the injured employee survives for more than three years after a job accident and then dies from causes related to the injury.

The court said that fundamental rights are to be distinguished from cases concerned with economic and social welfare legislation. Since workers compensation statutes involve social welfare legislation, the court said, the proper test is whether the regulation is reasonable in relation to the goal to be obtained and was adopted in the interest of the community as a whole. The court concluded that the statute could be

upheld under the rationality test. *Guy vs. Southwest Alabama Council on Alcoholism*, Court of Civil Appeals of Alabama, July 9, 1986 (BI/02/Ju.-\$10).

### Good faith

The 10th U.S. Circuit Court of Appeals ruled that a general liability insurer did not breach its duty of good faith to a policyholder by failing to reveal a clear and unambiguous limitation in the policy.

In 1979, Harry and Betty Wilson bought two businesses in Wyoming and hired Rose Neal to manage them. Security Insurance Company issued the Wilsons a general liability insurance policy with an endorsement for comprehensive criminal coverage, including employee dishonesty

coverage, with policy limits of \$25,000. The policy excluded employee dishonesty covering losses arising out of inventory computation or a profit and loss computation. Later, the Wilsons claimed that Ms. Neal stole inventory and cash from the businesses. The insurer rejected a claim based solely on a profit and loss statement prepared by their accountant. Thereafter, the insurer sought a declaration that the policy did not cover the facts here. The trial court ruled for the insurer.

The appellate court noted no other evidence of the loss was furnished. The court said the exclusionary clause was clear and unambiguous that a claim footed on an alleged employee dishonesty must be supported by more than profit and loss computations. *Security Insurance Co. of Hartford vs. Wilson*, 10th U.S. Court of Appeals, Sept. 2, 1986 (BI/01/Ju.-\$10).

## Managing rehabilitation

Continued from previous page  
training; work adjustment training; vehicle purchase or modification; special occupational equipment; and others.

Functional assessment also provides the means for producing routine program reports and evaluation data through an archive that automatically enters each case into the growing data base of claims experience.

There is certainly enough experience with both workers compensation and long-term disability

insurance programs to establish that the sooner a full evaluation of the claimant is available, the sooner a plan for treatment and services can be developed and the better the chance for a speedy closing of the case.

An action plan can be put together very early in the process—concentrating not only on the physical limitation of an impairment, but the strengths and support available to the injured worker and the rehabilitation professional.

Functional assessment gives a clear and

comprehensive picture of the injured worker, including the impact and extent of his psychological involvement. And a consistent method of assessment serves as a basis for discussion, goal setting, documentation and management—a valuable look at what can be expected of an injured employee working toward re-employment.

Not only does such a program evaluate the progress and direction taken in rehabilitation, it will help in future claims as a valuable part of the workers compensation insurer's data base.

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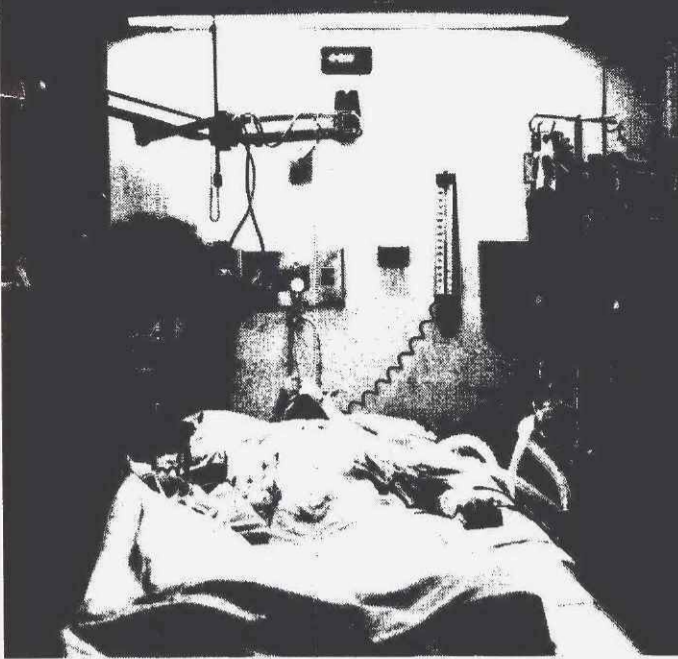
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## State benefits

*Continued from page 37*  
earning his prior salary. The cost is paid by the insurer.

### Maine

Back injuries comprised 25.5% of total disability injuries in Maine during 1985, the most recent year for which figures are available from the Maine Workers' Compensation Commission.



In Maine, total disability is defined as one or more days of lost work time.

Although figures are not available comparing medical, wage replacement and lump-sum payments for specific types of injuries, workers comp officials in Maine estimate that these costs are highest for back injuries, which often result in surgery or rehabilitation.

Of the amounts disbursed for workers comp claims in 1986, approximately 30% was for medical treatment; 50% for wage replacement; and 20% for lump-sum payments.

The maximum weekly workers compensation benefit in Maine is \$448 per week. Benefits are payable three days after incapacitation. Condition evaluation is done by either the employee's or employer's physician.

Disability payments are directly litigated on a case-by-case basis. Total disability benefits generally are equal to two-thirds of the employee's weekly salary plus a lump-sum award for partial impairment.

Maine is facing a rash of insurer withdrawals from its workers compensation market (*BI*, Sept. 21). Ten insurers or insurer groups, including Liberty Mutual Insurance Co., the largest work comp insurer in Maine, have filed notice of intent to withdraw from the state.

Insurers contend that workers compensation insurance is unprofitable in the state due to inadequate rates and losses in the state's assigned risk pool.

### Michigan

From the years 1978 to 1986, 39% of lost-time claims filed in the state were related to "trunk" injuries, said Edward M. Welch, director of the Michigan Department of Labor.



Wage-loss benefits alone for these types of injuries totaled about \$500 million, insurance claim figures show.

Benefits are \$391 per week maximum, with no minimum. The average weekly benefit is 80% of the employee's after-tax wages.

Benefits begin the second week following the injury and are retroactive if the disability is continuing. Benefits are received as long as the employee is disabled, unless the employee turns down an adequate job offer.

Michigan is a "wage-loss" state, meaning that no distinction is drawn between temporary and permanent total disability rates.

The injury evaluation process in the state is "purely adversarial," with the worker's and the insurer's physicians facing off, explained Mr. Welch. But, he added, only one-quarter of the cases reported are disputed.

In the case of a disputed claim, the bureau appoints a mediator to sit in on the hearings. Between 30% and 40% of these disputed cases are resolved in this mediation process.

All medical costs are payable by

the employer. After six months of disability, the employer can request the disabled employee undergo an independent medical exam.

Rehabilitation is not mandated in Michigan, but either the worker or the employer can request it in certain cases.

### Minnesota

Back injury claims totaled 14,495, or 31%, of the 46,710 workers compensation injuries reported in Minnesota last year, Labor and Industry Department figures show.

Based on insurer incurred-loss figures for 1986, all workers comp injuries cost the state roughly \$740 million.

Wage-loss benefits are generally equal to two-thirds of an employee's gross weekly wage.

For a worker injured between Oct. 1, 1987, and Oct. 1, 1988, the maximum benefit is \$376 per week, and the minimum is \$75.20. There is a three-day waiting period before payment begins.

Temporary total, temporary partial and permanent total benefits are payable weekly; permanent partial benefits are payable in a lump sum 30 days after the employee returns to work or in weekly installments if he does not return to work.

The treating physician determines when the employee can return to work, when maximum medical improvement occurs and whether there is permanent partial disability.

Permanent partial injuries are rated as a percentage of the entire body according to a schedule. Back injuries, unlike many states, are scheduled in Minnesota.

### New Jersey

The New Jersey Division of Workers' Compensation reported 5,509 closed formal filings on back injury claims for 1986, or 13.1%, of a total of 41,988 closed formal filings.

Aggregate benefits paid for all workers compensation claims closed during the year were \$45 million for temporary compensation and \$136 million for permanent compensation.

The division evaluates each case individually, and claims are categorized as direct payment, informal or formal.

Direct payment claims are usually for small amounts, paid directly by the insurer. The bureau routinely reviews these payments to ensure they are adequate.

More serious and disputed claims are reviewed either in an informal or formal hearing.

In an informal hearing, the employee is not required to have an attorney, and the bureau judge's decision is not binding.

In a formal hearing, attorneys are present from both sides, and the final decision of the bureau arbitration judge is binding on both parties.

*Continued on next page*



Continued from previous page

Eighty percent of the bureau's workload involves formal claims, 10% to 15% direct payment, and 5% to 10% informal.

Benefits for total permanent disability in New Jersey is 70% of wages, at a maximum of \$302 per week; the minimum is \$80 per week. The maximum payable period is 450 weeks. These amounts are the same for temporary disability, for which benefits are paid up to 400 weeks.

Benefits are effective seven days from the date of the accident. If the employee is not off of work for seven days, he is not eligible for non-medical benefits. If the employee is off more than seven days, the benefits are retroactive to the first day of injury.

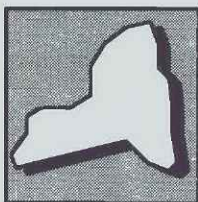
**New York**

Of the 137,122 workers compensation cases closed in 1985, 31,036, or 22.6%, were back injury cases, according to Rita Israel of the research and statistics department of the New York Workers' Compensation Board.

Compensation for back injury claims averaged \$7,979, compared with an average of \$5,225 for other types of workers compensation claims, according to figures supplied by the New York Workers' Compensation Board.

Maximum workers compensation benefits in 1985 were \$150 per week for partial disability and \$300 per week for total disability. Minimum benefits totaled \$20 per week for permanent or temporary partial disability and \$30 per week for temporary total disability. The minimum benefits for permanent total disability also was \$20 per week.

Back injuries in New York are non-scheduled, except in cases in which an impairment is permanent.



**Compensation for back injury claims averaged \$7,979, compared with an average of \$5,225 for other types of workers compensation claims, according to figures supplied by the New York Workers' Compensation Board.**

Evaluation for non-scheduled injuries, including back injuries, is conducted by impartial specialists called in by the board and an employee's physician when there is a dispute. In general, benefits are paid periodically, unless the employee applies and qualifies for

lump-sum payment.

No cash benefits are paid for the first seven days of disability. If the disability exceeds 14 days, the worker may receive a cash refund for those first seven days.

Rehabilitation is not mandated in the state but is optional if the

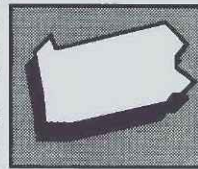
insurer wants to pay for it.

**Pennsylvania**

Trunk-area injuries made up 44,730, or 32.4%, of the 138,168 lost-time work injury and illness cases reported to the Pennsylvania Bureau of Workers Compensation in 1986.

Back injuries alone accounted for 30,091 cases in 1986, or 22% of the annual total.

The number of total work injuries and illnesses is 2% higher



than 1985's aggregate total of 135,258 cases and is the highest annual total since 1981.

The maximum benefit for any work-related injury is \$361 per week; the minimum is one-third of that, or \$120.33 per week.

There is a seven-day waiting period before benefits go into effect. If the worker is disabled 14 or more days, he is reimbursed for all time lost.

Evaluation in the state is conducted by the insurer only. If there is a claim dispute, "referees" employed by the bureau act as arbitrators to settle the claim. Rehabilitation is not mandated in the state.

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# Limit federal role in work comp: IAIABC

By MEG FLETCHER

HARTFORD, Conn.—State workers compensation administrators support some federal occupational disease notification efforts but emphasize that state agencies have the primary job of overseeing those claims.

Members of the International Assn. of Industrial Accident Boards and Commissions neither endorsed nor opposed the proposed High Risk Occupational Disease Notification and Prevention Act of 1987, which is pending in Congress (BI, July 27).

The act would require the Department of Health & Human Services through the National Institute of Occupational Safety and Health to notify employees who are or have been exposed to hazardous substances in the workplace over the past 30 years to seek medical testing to determine whether the exposure has or is likely to produce illness or disease. Employers would have the option of undertaking this notification procedure if they chose.

Instead, association members approved a resolution during their 73rd annual convention, held Sept. 12-16 in Hartford, Conn., that commends federal scientific and medical research and supports efforts to use the data to identify and notify workers who are at increased risk of contracting an occupational disease.

However, the association stated that those efforts should not supplant or interfere with state workers compensation agencies.

The IAIABC "recognizes the need and obligation of states to respond to the plight of those afflicted by occupational disease," the resolution says.

However, "This legislation is laying the groundwork for federal workers compensation," Susan Spangler, assistant director of loss prevention and control for the Washington, D.C.-based National Assn. of Manufacturers, told conference attendees at a forum sponsored by the National Council of Self-Insurers.

She also emphasized that many employers fear that merely sending notices to employees may trigger lawsuits and claims based on stress-related ailments.

Although the legislation has been revised to prohibit an employee from using a notification of exposure as the legal basis for a workers compensation or tort claim, medical findings and data following notification could be used to substantiate a claim.

The pending federal legislation also was discussed in a keynote speech at the IAIABC conference by Arthur Larson, a workers compensation scholar and a law professor at Duke University in Durham, N.C.

"I can only say that the debates so far have not confronted the issue squarely: Is this a job that is inherently beyond the capacity of private and state efforts? The burden or proof is on those who say it is, and as yet I have not seen a convincing case made for the proposition that the federal government alone is competent to perform this function," Mr. Larson said in his prepared remarks, which focused on the development of workers compensation under the U.S. Constitution.

Other issues discussed by the panelists at the IAIABC convention include:

## Academic study

State workers compensation systems have difficulty fairly compensating workers whose injuries result in permanent partial disabili-

ties, two academics say.

After studying 10 states—including Wisconsin, Florida and California in depth—the professors recommend that states adopt a new hybrid approach of ensuring that workers are treated adequately, equitably and efficiently.

The study, titled "Permanent Disability Benefits in Workers' Compensation," was discussed at the IAIABC convention by its authors: Professor John Burton Jr. of Cornell University in Ithaca, N.Y., and Monroe Berkowitz, a retired professor from Rutgers University in New Brunswick, N.J., who is now a researcher and arbitrator of labor-management disputes.

States now take one of three basic approaches to handling permanent partial disability benefits

that are not fixed based according to a benefit schedule based on the injury or illness involved, the authors said.

The permanent partial disability benefit can be based on:

- A medical impairment rating, which is a percentage rating that is translated into benefit dollars for a specific duration.

- A rate of lost earning capacity, which considers not only a worker's medical impairment but also other social and economic factors, like the worker's age and educational level and how that affects the worker's ability to find work.

This is also translated into benefit dollars that are awarded for a specific duration.

- Only actual lost wages.

States that use the first two approaches have a problem with imprecise impairment rating criteria and with predicting in advance which employees are going to need the benefits in the future, according to Mr. Burton, one of the study's authors.

States that try a wage-loss approach find that it is almost impossible to provide the injured worker benefits based solely on lost income. These states also find that it is difficult to determine what percentage of wage losses are due to an injury instead of factors like a worker's lack of motivation, he said.

In addition, the wage-loss approach "tends to decay into a system that pays on the basis of loss of earning capacity" instead of actual

lost wages, Mr. Burton said.

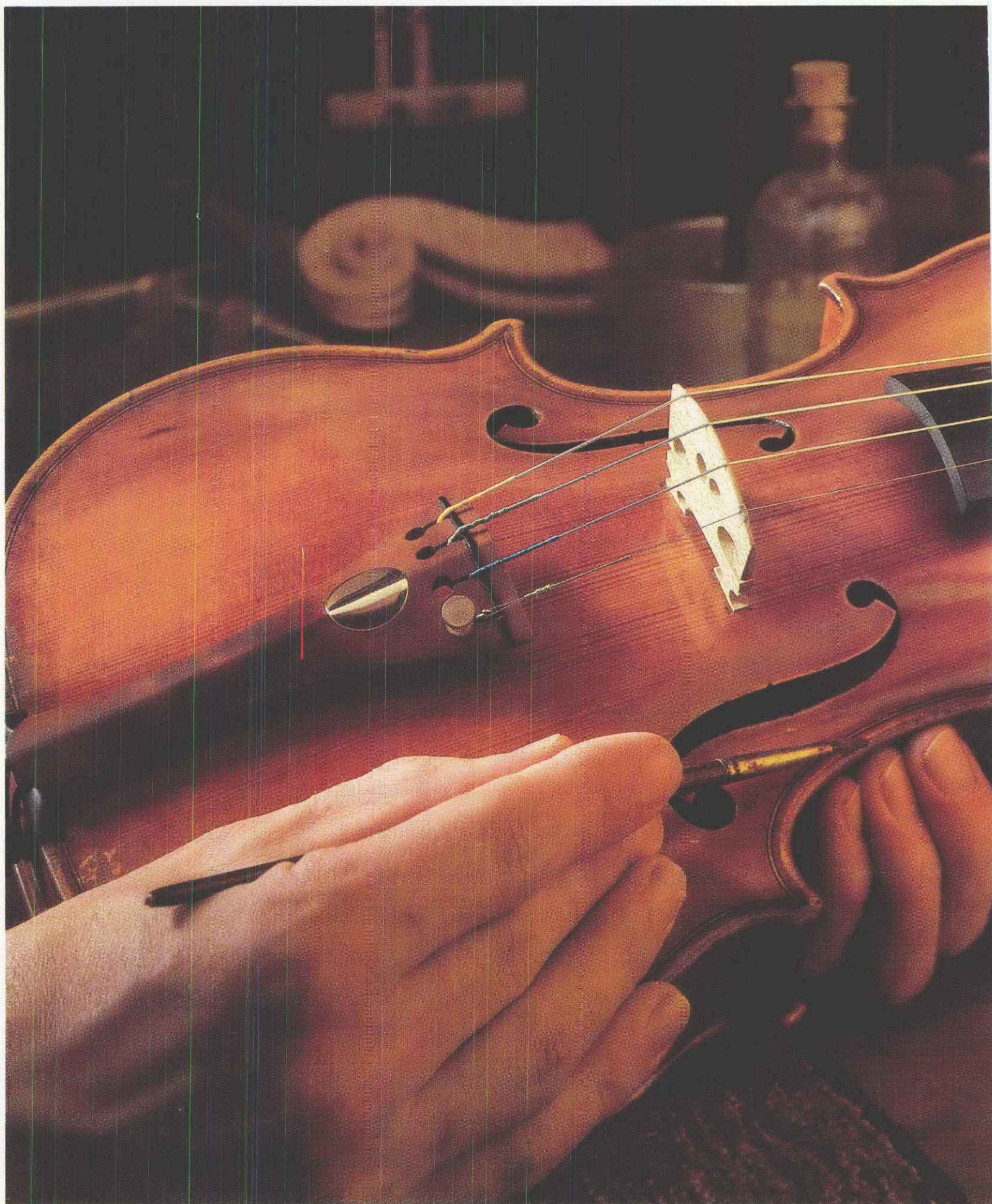
The wage-loss approach also tends to transform into a system in which employees can receive a compromise settlement in a lump sum in return for signing a form that releases an employer from future liability, he added.

However, Edward Welch, director of Michigan's Bureau of Workers' Disability Compensation, disagreed with the authors' view that settlements should be avoided in nearly all cases.

Mr. Welch said that injured workers should have the option of closing the books on their claims and that settlements lend predictability to state systems.

But Mr. Burton told IAIABC attendees that a substantial reliance

*Continued on next page*



Continued from previous page on lawyers in some state workers compensation systems "suggests a lack of efficiency."

"I'm not arguing—let's be very careful about this—that lawyers and litigation always reduce adequacy and efficiency. But I am asserting that there is no evidence from our study or any other study that I have seen suggesting that lawyers help achieve the goals of adequacy and equity," Mr. Burton said.

Indeed, in light of the data on soaring litigation costs, another panelist said the study treaded too lightly on the negative effects of litigation on the work comp system.

William P. Molmen, general counsel and assistant general manager of the California Workers Compensation Institute, said the cost of litigating workers compensation claims in the state increased 460% to \$985 million in 1986 from

**A substantial reliance on lawyers in some state workers compensation systems 'suggests a lack of efficiency,' says Professor John Burton Jr. adding, 'I'm not arguing that lawyers and litigation always reduce adequacy and efficiency.'**

\$176 million in 1976.

Messrs. Burton and Berkowitz recommend a hybrid workers compensation system that eliminates the distinction between scheduled and non-scheduled ratings.

They suggest that each state implement an impairment rating division that uses medical guidelines to determine the degree of a worker's impairment and that those ratings be protected from legal challenges.

In addition, injured workers should be compensated by a two-tiered benefit system in which all

workers receive a fixed percentage of pre-injury wages but that only those workers who meet additional criteria, including continuing wage loss, receive the second-stage benefits.

Mr. Burton also told conference attendees that many state workers compensation systems receive inadequate resources to perform their work.

**Stress-related claims**

Stress can play a role in workers compensation claims for heart, back and psychiatric ailments, but

the connection may be less direct than many claimants think, medical experts explained at the IAIABC annual convention.

"Exposure to stress is not necessarily harmful," emphasized Dr. Elliot Sagall, assistant Clinical Professor of Medicine at the Harvard Medical School in Cambridge, Mass.

Stress is a stimulus to which a person may not react, or he or she may react inconsequentially, harmfully or beneficially. And, stress may have no effect, a transient effect or a permanent effect on a person, Dr. Sagall said.

The major sources of stress include physical and psychological factors, he said.

Despite the rise in stress-related claims related to heart ailments, there is no scientific evidence that proves long-term psychological stress causes heart ailments, Dr. Sagall said.

However, there is a possible—

but not probable—relationship between them, he said. The effect depends upon the claimant's personality.

There is scientific evidence, though, that an isolated episode of stress can trigger some heart problems like an attack of angina, he said.

"The shorter the time between exposure and alleged adverse results favors causation," he said.

Psychological stress is created by perceived threats to a person's life or self-esteem, said Dr. Walter Borden, a psychiatrist and adjunct professor at the medical and law schools of the University of Connecticut in Storrs.

However, those threats and a person's reaction to them must be considered in light of his vulnerabilities and strengths at the time, Dr. Borden said.

In addition, fear magnifies pain and other feelings, like depression. And, grief is compounded if it comes at the same time as another loss, like that of a person going through a divorce, he explained.

"Many emotional issues get displaced to the workplace," he added.

A combination of rehabilitation services may be needed to get a worker back on the job as soon as possible following a stress problem, Dr. Borden said. That approach will help prevent depression, which can become "a vicious cycle," he said.

**Bork elected president of IAIABC**

HARTFORD, Conn.—About 600 people attended the seminars and meetings at the 73rd annual convention of the International Assn of Industrial Accident Boards and Commissions.

They gathered Sept. 12-16 in Hartford, Conn., at the meeting hosted by IAIABC outgoing President John Arcudi, chairman of Connecticut's Workers' Compensation Commission.



Mr. Bork

Succeeding him as president is Phillip T. Bork, a member of the Board of Industrial Insurance Appeals in Olympia, Wash.

In addition, Charles J. Krysiak, chairman of the Maryland's Workers' Compensation Commission, was chosen president-elect. Other elected officers are: John N. Shanks II, chairman of the the Indiana Industrial Commission, vp; and Reginald Allen, chairman of the Workers' Compensation Board in Halifax, Nova Scotia, secretary.

Returning to the IAIABC's executive committee are Allyn C. Tatum, commissioner of the Arkansas Workers' Compensation Commission, and Marjorie Dight, claims manager of the Arizona Industrial Commission.

Newly elected to the committee are: Robin Waller, commissioner of the Connecticut Workers' Compensation Commission; Edward Welch, director of the Michigan Bureau of Workers' Disability Compensation; and Judge Theodore Vrana, a judge with the Nebraska Workers' Compensation Court.

Mr. Arcudi also will serve on the executive committee.

In addition, the IAIABC will establish a new ad hoc committee to deal with self-insurers' concerns, Mr. Bork said.

For more information about the organization, contact the IAIABC, P.O. Box 13449, Jackson, Miss 39236; 601-366-4582.

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# Rule clarification helps work comp self-insurers

By MEG FLETCHER

HARTFORD, Conn.—State workers compensation officials should allow employers that self-insure their work comp risks to post a wide variety of financial instruments to ensure payment of employees' claims, a California regulator suggests.

"We recently had a surety bond crisis in our state for self-insurers. . . and I'm sure many of the other states are having the same difficulties," said Mark B. Ashcraft, manager of the Department of Industrial Relations for California's Office of Self-Insurance Plans. Mr. Ashcraft spoke earlier this month at the midyear meeting

**California 'recently had a surety bond crisis for self-insurers,' says Mark B. Ashcraft.**

of the National Council of Self-Insurers, which preceded the International Assn. of Industrial Accident Boards and Commissions' annual conference (see story, page 48).

"I think that the self-insurers in California were able to weather this crisis because, in fact, they could go to combination deposits when they were unable to get an increase in their surety bonds," he said (BI, Aug. 3).

California regulators last year clarified that a self-insurer could post any combination of acceptable surety bonds, irrevocable letters of credit, highly rated securities or cash to meet deposit requirements.

Previously, any of those financial instruments were permitted by itself, but there was some question among regulators about whether self-insurers could combine several to post their required deposit.

"That has worked very well for us," Mr. Ashcraft said. "Our surety bond crisis may be over."

Although California allows work comp self-insurers flexibility in posting deposits, the state wants to ensure that self-insurers are financially responsible.

Only 1,500 of the more than 400,000 private employers in California are eligible to self-insure their work comp exposures, according to Mr. Ashcraft. There may be twice as many that could meet state guidelines for self-insuring but have chosen not to self-insure.

The state's financial guidelines that require work comp self-insurers to meet benefit liabilities and post sufficient deposits that are too stringent for most California employers. However, most meet other requirements regarding an acceptable safety and health program and competent administration of work comp benefits, he said.

The state's general financial guidelines for work comp self-insurers include: shareholders equity of at least \$2.2 million and 30% of total assets; average net profits of about \$300,000 for each of the past five years; and adequate working capital.

Self-insurers are required to submit an audited report and post a security deposit that is equivalent to 35% of estimated future liabilities. However, a company in financial difficulties may be required to post a higher percentage deposit. The highest deposit Mr. Ashcraft knows of was 240% of estimated future liabilities.

A truly financially troubled employer would lose its authority to self-insure.

In addition, employers that are authorized to self-insure have their financial condition reviewed annually, Mr. Ashcraft said.

Thirteen California self-insurers have gone bankrupt since 1983, including nine that required the state's Self Insurer's Security Fund to step in, he said. Only about half of the \$8.6 million the security fund has paid to settle claims against the bankrupt self-insurers was security posted by the bankrupt self-insurers.

The security fund also faces an undetermined portion of an additional \$6.1 million in liabilities as a result of those bankruptcies, he said. ■

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# IAIABC takes guaranty fund stance

By MEG FLETCHER

HARTFORD, Conn.—State guaranty funds established to cover bankrupt self-insurers' workers compensation claims should be viewed as a last resort for providing benefits, according to guidelines adopted by the International Assn. of Industrial Accident Boards and Commissions.

A 20-point package of guidelines for establishing workers compensation guaranty funds was proposed by the National Council of Self-Insurers in conjunction with the IAIABC during the IAIABC's 73rd annual convention, held Sept. 12-16 in Hartford, Conn.

The proposals developed based on an October 1986 survey of 168 bankruptcies of self-insured employers in 13 states from 1980-

1984, said Alan H. Strohmaier, the committee's chairman and director of workers compensation for General Motors Corp. in Detroit.

After reviewing the legislative history of the 22 existing state guaranty funds, the NCSI found that several were created because "it became obvious that some bankrupt self-insurers didn't have sufficient security to cover all their liabilities," Mr. Strohmaier said at the NCSI mid-year meeting prior to the IAIABC convention.

"Such a crisis situation simply isn't conducive to creating balanced, well-thought-out legislation," he added.

The NCSI wants state legislators to develop guaranty funds before there is crisis and to recognize that a guaranty fund is "a protection of last resort which should seldom, if

ever, be necessary."

"Guaranty funds are no substitute for sound underwriting practices, for sound regulatory actions and for monitoring by state agencies," said Allyn C. Tatum, a member of the Arkansas Workers' Compensation Commission and a member of the IAIABC's Executive Committee.

Among the NCSI proposals:

- States should allow only those employers that have adequate financial resources to self-insure and they should be required to post adequate security for the risk undertaken. Security should be in the form of surety bonds, cash escrows, letters of credit, reinsurance or excess insurance.

- There should be a maximum limit on annual assessments for guaranty funds.

- Assessments should be based on the amount of claims paid by an employer during the prior year.

- Assessments should cover the administrative costs of the fund.

- If a self-insurer ceases to self-insure, he should continue to be liable for assessments as long as he has paid benefits during the prior year for claims that occurred while the company a self-insurer.

- If it is determined that pre-funding would be desirable, it should be limited to the costs of establishing appropriate administrative mechanisms and paying a few months of estimated claims.

- The guaranty fund should have the right to borrow or buy excess insurance and the fund should be relieved from having to pay any interest or penalties to workers.

- The fund should have the right to administer cases in-house or use a third-party administrator.

- The fund should have both the right and obligation to proceed against bankrupt or insolvent employers.

- All self-insured employers, as a condition of becoming self-insured, should be required to notify the state agency and the guaranty fund within 24 hours of any bankruptcy filing under federal law, or insolvency proceeding under state law, that involves the employer.

- The fund should be immune from lawsuits.

- The governing board of the fund should be made up of representatives of self-insured employers in the state and that board should select a fund manager, legal counsel and a claims administrator.

- The fund should be limited to providing benefits for the employees of a self-insurer that is declared bankrupt or insolvent. The funds should not be liable for group self-insurers or public self-insurers, which should each have their own guaranty funds.

- Before the fund becomes liable for the claims of an insolvent self-insurer, all securities of the self-insurer should be exhausted.

- The fund should only be liable when there has been an adjudication or order by a bankruptcy court, or a judicial decree of insolvency that prevents the employer from paying its workers compensation obligations.

- The fund should only be responsible for payments due after the employer files bankruptcy and a bankruptcy court order forbids him from paying claims or where there has been a judicial declaration of insolvency under state law.

The 22 states with workers compensation guaranty funds are: Arizona, California, Connecticut, Florida, Hawaii, Illinois, Kansas, Maine, Maryland, Michigan, Minnesota, Nevada, New York, North Carolina, Ohio, Oklahoma, Oregon, Utah, Virginia, Washington, West Virginia and Wisconsin.

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London

# Tax change may aid Guernsey insurers

By CAROLYN ALDRED

LONDON—A recent change in Guernsey's tax treatment of insurers will be a boon to long-tail business written by insurers on the island, insurers believe.

Beginning with the 1988 tax year, all Guernsey-registered insurers can elect to defer their tax liabilities until claims have been settled, according to Steve Butterworth, the island's superintendent of insurance business, who petitioned the government for the change.

"One of the problems, especially prevalent in long-tail writers, is that the claims cannot be accurately and fully ascertained until the losses have been totally resolved. . . . There is therefore a need to defer the tax liability," said Mr. Butterworth in his Sept. 17 letter to Guernsey-registered insurers.

Although Guernsey is currently Europe's premier captive domicile, Guernsey's captive managers were worried that it would lose its top spot to the Isle of Man unless Guernsey's tax laws were modified.

Insurers in the Isle of Man are exempt from income tax under the Income Tax (Exempt Insurance Companies) Act 1981.

Now, however, insurance companies based on Guernsey can defer tax payments when "the insurer is certain of the final liabilities relating to past premium income. Thus tax will be assessed only when there have been paid claims and/or an element of past reserves have been taken to profit," according to Mr. Butterworth.

The change is just the first step in a major restructuring of Guernsey's taxation system relating to the insurance industry, Mr. Butterworth said.

"Most jurisdictions of the world have a taxation system which is not sympathetic to the problems of their insurance industry. We in Guernsey have been working to produce a taxation system which specifically responds to the insurance industry's needs and also benefits the local economy. A number of proposals are being studied," said Mr. Butterworth in his letter.

Other possible changes are still in the process of consultation and would have to be approved by legislators, according to Mr. Butterworth.

"The deferment of taxes is a very large step in the right direction," said John Stuart, company accountant of Transnational Risk Management (Guernsey) Ltd.

"The government is very keen to build up the long-tail business sector in the island and this will certainly help," he said, adding that 30% of the captives Transnational manages primarily write long-tail business.

"It is quite possible we will attract more long-tail captives now," he noted.

Although the idea of trying to establish a tax-exempt status for insurers is still being discussed on the island, single-parent captives wholly owned by British companies in tax-exempt domiciles are still liable to pay tax.

Under British law dealing with the control of foreign companies, at least 50% of the captive's revenue must be paid to the parent company in the United Kingdom, where it is then subject to corporation tax of up to 35%.

Also, "although there are jurisdictions where no taxation is payable, Guernsey insurers recognize that they should contribute to the local economy by paying taxes," Mr. Butterworth noted in his letter.

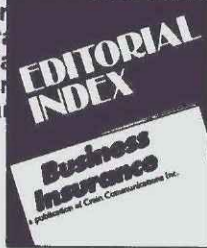
## Merrett acquisition

Lloyd's of London underwriting group Merrett Holdings P.L.C. plans to acquire a Canadian loss adjuster.

"Negotiations for the acquisition of general and marine insurance

*Continued on next page*

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## London

Continued from previous page  
adjuster Harding & Bickers Adjusters Ltd. are at an advanced stage," said Chairman Stephen Merrett in the company's interim report.

Details are expected to be sent to shareholders in the near future.

Merrett Holdings also is hoping to acquire the remaining 60% shareholding of fellow Lloyd's underwriting agency Anton Holdings Ltd., according to Mr. Merrett.

Merrett acquired 40% of Anton in 1986 with an option for the balance.

"We are discussing... our purchase of the balance of the shares... in the belief that this development would be in the interest of both companies," said Mr. Merrett.

News of both acquisition plans

were announced as Merrett revealed a 28.2% decline in pretax profits for the first half of 1987 to 3.9 million pounds (\$6.3 million at June 30 exchange rates) from 5.0 million pounds (\$7.7 million at June 30, 1986, exchange rates) in 1986.

The results were affected by a decline in profit commissions from the group's managed syndicates. Profit commissions fell to 2.6 million pounds (\$4.2 million) from 4.1 million pounds (\$6.3 million). However, underwriting agency salary revenue rose to 2 million pounds (\$3.2 million) from 1.6 million pounds (\$2.4 million), and loss adjusting activities provided a first-time contribution of 1.5 million pounds (\$2.4 million).

Mr. Merrett forecast the company's final pretax profit to be about 4.5 million pounds (\$7.5 million at current exchange rates) by the end of 1987.

## Engineering pension

A pension program open to all engineering employers in the United Kingdom is being organized by the Engineering Employers' Federation in a joint venture with Friends Provident Life Office, a mutual life insurance company.

The Engineering Industry Pension Scheme (EIPS), expected to be operational after April 6, 1988, will cater to the pension requirements of engineering employers that do not currently sponsor private pension plans.

The plan is open to all male employees between the ages of 18 and 60 and all female employees between the ages of 18 and 55. It will provide retirement and spouses' pensions and a lump-sum benefit in the event of death before normal retirement age.

In the United Kingdom, the standard retirement age is 65 for men and 60 for women.

"There are large numbers of people working in the engineering industry—over half-a-million—who, for a variety of reasons, have no opportunity to belong to an occupational pension scheme," said James McFarlane, director general of the Engineering Employers' Federation.

The federation has 5,000 member companies that design, manufacture and service a broad range of electronic, electrical and mechanical equipment. The plan is also open to non-EEF-member engineering companies.

## Pension plan

British textile company Coats Viyella P.L.C. is forming a group pension plan open to all full-time employees over the age of 20 who work at least 30 hours a week.

The plan, which will be introduced Jan. 1, offers pension and death benefits for the first time to about 30,000 employees. It also provides a range of benefits for members of existing pension plans operated by Coats Viyella subsidiaries.

The plan "will be run in a participative way with a structure of local and divisional committees composed of representatives of management and employees and the scheme's trustees," according to a statement from the company.

## Heath acquisition

Lloyd's of London broker C.E. Heath P.L.C. is acquiring 49% of Mexican reinsurance broker Agencia Interoceanica Asesores e Intermediarios S.A. for an undisclosed amount.

Agencia Interoceanica is currently 100% owned by Gustavo Cisneros and Fernando Montes de

Continued on next page

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Continued from previous page

Oca Martin, both of whom will continue as shareholders, owning the balance of the equity.

Mr. Cisneros and Mr. Montes established the reinsurance brokerage after resigning as directors of Frank B. Hall Re de Mexico in April 1987.

"I believe we shall see the benefits of this association not only in the profits of the company itself, but also in an increase in brokerage volumes through C.E. Heath to the London market," said Richard Fielding, Heath's chairman.

### Stock exchange listing

Lloyd's of London broker Lloyd Thompson Ltd. plans to seek a full listing on the London Stock Exchange next month to help the company's further expansion, said Chief Executive Ken Carter.

Lloyd Thompson was formed in 1981 by Peter Lloyd and John Lloyd, former directors of Alexander Howden Insurance Brokers Ltd. Ken Carter, formerly a director with Sedgwick Insurance Brokers Ltd. joined in 1986. The company employs 136 staffers.

Pretax profits for the company for the year ended June 30, were 4.2 million pounds (\$6.8 million), with brokerage revenue of 9.2 million pounds (\$14.8 million) and investment revenue of 1.8 million pounds (\$2.9 million), said Mr. Carter. Sources estimate that an offering on the stock exchange will value the company at between 35 million pounds and 40 million pounds (\$58 million and \$66.2 million at current exchange rates).

A total of 72 company employees already are shareholders in Lloyd Thompson. The full listing, in which 25% of the company's shares will be sold, will allow current shareholders to ascertain the market value of their investment, said Mr. Carter.

A full stock exchange listing also will "facilitate mergers and acquisitions and enhance our reputation with our clients," said Mr. Carter.

Lloyd Thompson is a wholesale and reinsurance broker specializing in energy, hull, cargo and North American property risks and marine reinsurance. About 80% of its business stems from the United States, according to Mr. Carter.

The company intends to increase its market share in its existing areas of business as well as expand into aviation and non-marine reinsurance, said Mr. Carter, who did not rule out possible brokerage acquisitions in the London market.

Meanwhile, the company hopes to acquire a team of 17 employees who resigned from the political and credit risk division of Lloyd's's broker Hogg Robinson & Gardner Mountain P.L.C.. The team includes Directors Jack Barnes and Mark Drummond-Brady.

HRGM's political and credit risk division is one of the largest in the London market, employing a total of 180 people. The 17 brokers specialize in placing political risk insurance mainly at Lloyd's and represent "less than half" of HRGM's political risk brokering team, said HRGM Director Julian Radcliffe.

"Discussions are still continuing and I would be surprised if they all depart," he said.

### Crawley Warren

Lloyd's of London broker Crawley Warren (Holdings) Ltd. is seeking a full listing on London's Stock Exchange next month in a placement valued at about 25 million pounds (\$41.4 million).

News of the planned listing was announced when Chairman Bernard Warren revealed pretax profits for the company of 2.4 million pounds (\$3.9 million at June 30 exchange rates) for the year ended June 30, 1987, up from 2

million pounds (\$3.1 million at June 30, 1986, exchange rates) in 1986. Gross revenue totaled 11.5 million pounds (\$18.5 million), compared with 10.9 million pounds (\$16.7 million) last year.

Crawley Warren, which was formed in 1973 by Mr. Warren and Alan Crawley, specializes in aerospace insurance and accident and health coverage for the entertainment and North American professional sports industries. Other divisions broker reinsurance, property and casualty and blood-stock coverages.

Crawley Warren also owns a Canadian travel insurance subsidiary, Voyageur, which markets products through some 4,000 travel agents in Canada. The company plans to change Voyageur's status from that of a broker with binding authority on behalf of Lloyd's's underwriters to that of an insurance company, underwriting for its own account, in December.

Some 90% of Crawley Warren's

brokerage revenue is generated in U.S. and Canadian dollars.

"Our floatation on the London Stock Exchange represents a natural progression in the development of the company. Our strategy of concentrating on specialist 'niche' insurance brokering activities will continue," said Mr. Warren.

### Steinhart resigns

Bernard Steinhart, deputy chairman of Alexander Howden Ltd., has resigned from the company to pursue other interests, according to a statement from AHL.

Mr. Steinhart was "one of the original and principal architects of the new Alexander Howden Ltd., formed in June 1984, and has played a significant role in its dramatic growth," the statement says. Since that time, the company's staff has grown to 800 from 80, a company spokesman said.

Mr. Steinhart "has a wide range of business interests and has de-

ecided to concentrate his time on their continued development," said the statement. He will not be replaced as deputy chairman, said a spokesman.

Mr. Steinhart, whose resignation was effective Sept. 4, could not be reached for comment.

### Comings & goings

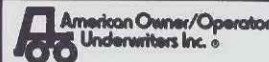
Richard Lay has been appointed joint managing director of Heath Fielding LMX Ltd., the London market excess-of-loss brokering subsidiary of Lloyd's of London broker C.E. Heath P.L.C. Gilliat, Scotford & Hayworth Ltd. has appointed Michael Manning as underwriter of Lloyd's of London non-marine syndicate 56 effective Jan. 1, 1988. He will succeed David Chambers, who is retiring. Also, Andrew O. Ramage was appointed a director of the company on Sept. 1 and deputy underwriter of non-marine syndicate 56.

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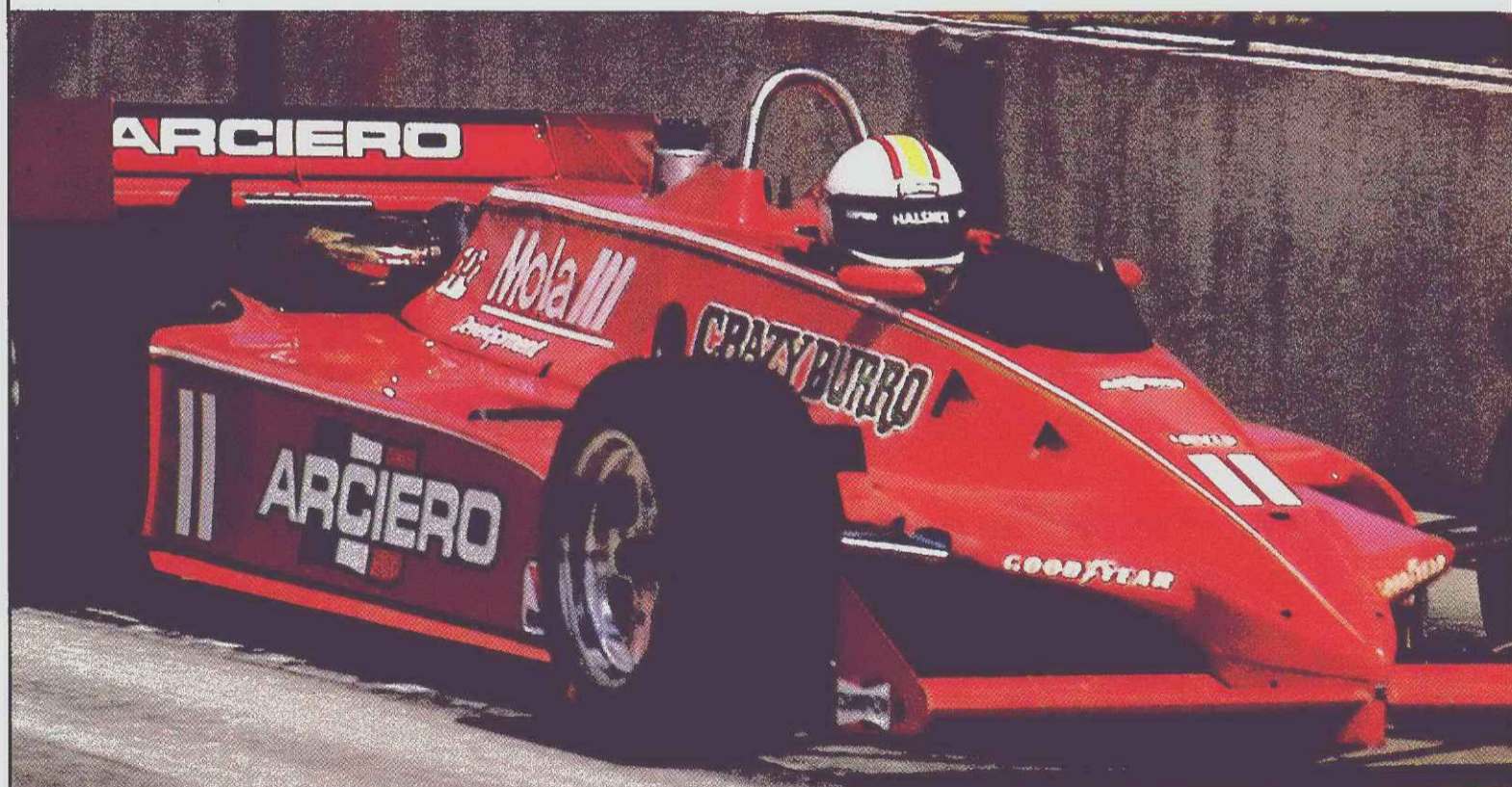


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# Blood banks form risk retention group

By DEBORAH SHALOWITZ

## Risk retention roundup

ARLINGTON, Va.—The American Assn. of Blood Banks plans to form a risk retention group owned by member organizations that will offer primary professional liability and general liability coverage.

The unnamed risk retention group is expected to begin writing policies by Jan. 1, said Gilbert Clark, executive director of the Arlington, Va.-based professional and trade group.

The risk retention group is being formed in response to a 362% rate hike for an AABB-sponsored insurance program written by Great American Insurance Co. in Cincinnati. Rates jumped from 65 cents per donation to \$3 per donation in 1986.

The risk retention group will

provide limits of \$1 million per claim and \$3 million aggregate for each blood bank, according to Mr. Clark.

This insurance covers blood bank administrators, technicians and other staff at blood banks and transfusion centers.

Although specifics of the coverage have not been finalized, Mr. Clark said premiums would be about \$1.10 per donation during the risk retention group's first year, depending on the cost of reinsurance.

Also, policyholders probably will be responsible for an initial capital contribution of 75 cents per unit of blood during the group's first year,

he noted.

"We would probably not make any decisions on a premium reduction for at least three years," but after that premiums would be based on loss experience, according to Mr. Clark.

Policies will be written on a claims-made basis with coverage retroactive to Sept. 1, 1985, Mr. Clark noted. Deductibles have not yet been determined.

Most likely, the risk retention group will be domiciled in Illinois because the state "has an excellent Insurance Department," said Mr. Clark.

Furthermore, the AABB is incorporated in Illinois, though it main-

tains its headquarters in Arlington.

Mr. Clark explained the blood centers a few years ago were paying a premium of 35 cents per donation for professional liability and general liability insurance. Premiums rose to 65 cents per donation a couple of years ago.

On Sept. 1, 1986, Great American raised the premium it charges to \$3 per donation and switched from an occurrence to a claims-made policy form.

Anticipating such action, the AABB commissioned a study from Milliman & Robertson Inc. in Milwaukee to assess the proper premium rate. The study, which was completed last spring, said a premium of 65 cents per donation would be sound.

When the AABB showed the

study to Great American, however, the insurer "wasn't impressed," Mr. Clark said.

Mr. Clark attributes Great American's rate increase to "fear of the unknown" about acquired immune deficiency syndrome.

Great American officials could not be reached for comment.

The possibility of developing AIDS from blood procured from an AABB-member blood bank is very small, he said, pointing out that routine testing of all blood donated to AABB centers for AIDS began in the spring of 1985.

"We expect that there will be very few claims arising from transfusions" after Sept. 1, 1986, he said. However, "we seem to have a great deal of difficulty getting commercial insurers to listen to us," complained Mr. Clark.

The AABB decided to form a risk retention group after it received a feasibility study conducted by Washington-based Victor O. Schinnerer & Co. Inc., Mr. Clark said.

AABB has not decided who will be the risk retention group's underwriting manager, managing general agent, auditor or accountant, according to Mr.

**Gilbert Clark attributes the insurance rate hike to 'fear of the unknown' about AIDS.**

Clark. Although a few reinsurers have indicated interest in reinsuring the risk retention group, the AABB does not have any formal commitments from reinsurers yet, he added.

About 2,400 independent blood centers, hospital blood banks and transfusion centers are AABB members. There are only two or three independent blood centers that are not members of AABB, Mr. Clark said.

The smallest AABB center annually collects about 2,000 units, while the largest AABB center annually collects some 800,000 units of blood, Mr. Clark said. Thus, the smallest amount a member of the risk retention group would pay in premiums for the first year would be \$2,200 annually, while the maximum annual amount premium would be \$880,000.

A total of about 4 million blood donations per year are insured by Great American through the AABB-sponsored insurance program.

Mr. Clark estimated that another 2 million blood donations per year are insured by St. Paul Fire & Marine Insurance Co. or the Medical Insurance Exchange of California, an Oakland-based insurance company that writes coverage for 10 California blood banks and one in Alaska.

He predicted that all of the association's members currently purchasing insurance from Great American would opt instead to insure through the risk retention group, making the group's annual premium flow during its first year at least \$4 million.

In addition, some of the blood centers currently purchasing coverage from other insurers might join the risk retention group, added Mr. Clark.

The American Red Cross runs 55 blood centers in the United States that collect about 6 million units annually—or about half—of the nation's blood, he noted. Red Cross blood centers are insured through the national Red Cross.

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# Panel urges incentives to prefund retiree benefits

By JERRY GEISEL

WASHINGTON—Employers should be given tax incentives to prefund their retiree health care benefits, a federal task force recommends.

In its final report delivered last week to Congress and the Department of Health & Human Services, the Task Force on Long-Term Health Care Policies said contributions to trusts established to pay for retiree health care benefits should be allowed to earn tax-free interest.

In addition, future medical care inflation should be taken into account when limits are set on the maximum annual tax-deductible contributions employers can make to the trusts, the task force report says.

Giving employers tax incentives to prefund retiree health care benefits—including long-term care benefits—would erode the government's tax base, the task force acknowledges. But that loss of revenue should be measured against the traditional social policy objectives of encouraging employers to expand benefit programs, according to the report.

**'Tax-favoring of employee health benefits has an established role,' the task force says.**

"Tax-favoring of employee health benefits has an established role in encouraging employer sponsorship and employee acceptance of socially desirable benefit programs," the report said.

These recommendations to encourage more prefunding of retiree health care benefits fly in the face of the Deficit Reduction Act of 1984.

Under that law, investment income earned on reserves held by special trusts—known as Voluntary Employee Beneficiary Assns.—which are used to pay for retiree health care benefits, is taxed.

The DEFRA restriction does not apply to VEBAs established to pay for current employees' health care benefits.

In addition, DEFRA stipulated that employers could not take future medical care inflation into account when determining the maximum tax-deductible contributions they are eligible to make to VEBAs to fund retiree health care benefits.

While few employers—prior to DEFRA's enactment—used VEBAs to prefund retiree health care benefits, employer interest in a tax-effective way to prefund these benefits has greatly increased since then, experts say.

Interest has increased because employers have become more aware of the size of retiree health care liabilities and because of concern that the Financial Accounting Standards Board will recommend that retiree health care liabilities be recognized on corporate balance sheets.

For example, the Washington-based Employee Benefit Research Institute estimates that employers have promised—but not funded—some \$85 billion in health care benefits to current retirees.

And no one knows how many hundreds of billions of dollars in health care benefits have been promised—but not funded—to future retirees.

Business groups, aware that the

administration is opposed and Congress largely indifferent to the problem of prefunding of retiree health benefits, may be influenced by the task force recommendation.

"Perhaps, this is a first step forward," observed Cathy Amkraut, manager of public policy at the Washington Business Group on Health.

"At least the issues are being raised," Ms. Amkraut said.

The task force report was mandated under a provision of the Consolidated Omnibus Budget Reconciliation Act of 1985. The Treasury Department also is studying whether tax incentives should be allowed to encourage companies to prefund retiree health care liabilities. ■

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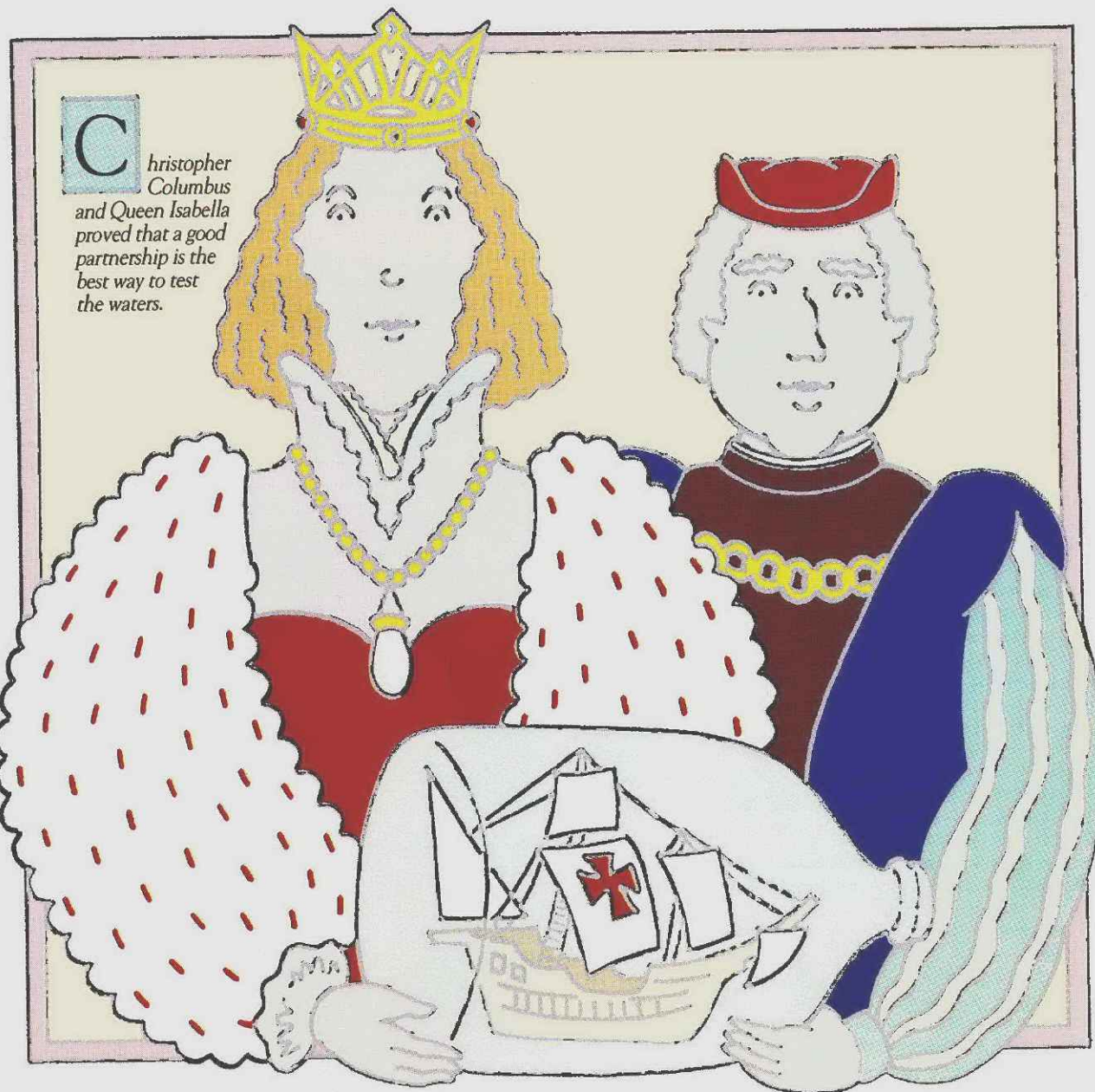
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# NAIC to increase market surveillance to cut insolvencies

By DEBORAH SHALOWITZ

PITTSBURGH—The National Assn. of Insurance Commissioners plans to increase market and solvency surveillance in an effort to reduce the number of insurer insolvencies.

"The most significant thing" the NAIC accomplished at its North-east zone meeting in Pittsburgh Sept. 13-16 was increasing data base fees charged to insurers by 150% so the organization can beef up market and solvency surveillance, said NAIC President Edward J. Muhl following the meeting.

"There are different questions being asked today than two years ago," noted Mr. Muhl, who is also the Maryland insurance commissioner. "The increase in data base fees is an important step to take us into the next four to five years."

The NAIC plans to use the revenue generated by the data base fees to hire additional staff members with backgrounds in the reinsurance industry to increase market and solvency surveillance, Mr. Muhl said. The NAIC also plans to purchase more computers, he added.

The increased surveillance is needed because insurer insolvencies remain one of the primary problems facing insurance regulators, officials agreed.

In need of "immediate" attention are 234—or 9.3%—of the 2,529 U.S. property/casualty insurance companies and 221—or 10.4%—of the nation's 2,127 life, accident and health insurance companies, according to a report by the NAIC's examination team based on insurer's 1986 annual statements.

This is an improvement over the prior year for property/casualty insurers, but a not for life/health insurers.

Based on 1985 annual statements, 271—or 10.8%—of 2,505 property/casualty companies were in need of "immediate" attention, while 220—or 10.7%—of 2,052 life, accident and health insurance companies were in need of "immediate" attention.

An NAIC spokeswoman explained that "immediate" attention means that the short-term viability of the company could be in jeopardy.

However, she emphasized the label does not predict impending insolvency.

For example, although the NAIC said 271 property/casualty companies needed immediate attention last year, only 17 actually were declared insolvent in 1986.

Similarly, although the NAIC said 220 life, accident and health insurance companies need immediate attention, only five were declared insolvent last year.

John Tinsley, the NAIC's 1987 examiner team project director, also reported to the Examination and Oversight Task Force that 335—or 13.2%—of the 2,529 property/casualty companies are "targeted" for attention, along with 186—or 8.7%—of 2,127 life, accident and health insurance companies.

Mr. Tinsley is a financial examiner with the Delaware Insurance Department.

Mr. Muhl also said the NAIC executive committee has discussed

*Continued on next page*

**Raising data base fees is the 'most significant thing' done at the meeting, says Mr. Muhl.**

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Continued from previous page  
whether allowing insurers to report the value of their bond portfolios in their annual statements at market value rather than amortized value would help control severe market capacity swings.

Allowing insurers to carry their bonds at market value would give them a more realistic picture of their surplus, which would provide more stable capacity.

While the suggestion to change how insurers report the value of their bond portfolio is still in the developmental stage, Mr. Muhl said this "may well be the key" to controlling severe capacity swings.

Regulators considered several other topics during their meeting:

- A panel of six insurance fraud experts told the NAIC that insurance fraud costs the industry billions of dollars each year but that a significant amount of fraud can be stopped if special investigative units are established by insurance companies or state insurance departments.

Vincent Rapp, president of the National Assn. of Special Investigative Units, said approximately 75 insurance companies in the United States and Canada currently have about 200 people investigating insurance fraud.

Insurer-sponsored special investigative units "work and are many times successful" because they maintain "a directed and sustained effort" to fight fraud, Mr. Rapp said.

However, Robert McKenna, director of the Florida Division of Insurance Fraud, said it is the responsibility of states to investigate fraud because it is a criminal activity.

"Companies and industry have a fiduciary responsibility, but they don't have the power to catch criminals," he said. "The state does."

- A two-pronged proposal unveiled by insurers that would allow the federal government to sell primary residential earthquake insurance to homeowners and "high-level" excess-of-loss reinsurance against earthquake, volcanic eruption and hurricane and windstorm damage to insurers is being considered by an NAIC committee (*BI*, Nov. 10, 1986; Feb. 4, 1985).

A federal earthquake coverage program is necessary because "a major earthquake could result in such serious financial losses to the insurance industry and to the financial community as a whole that they would be unable to continue normal operations," according to the proposal.

John Crosby, senior vp and general counsel of the National Assn. of Independent Insurers, told the Commercial Lines Property and Casualty Committee that a serious earthquake in the Midwest or in California could cause losses of more than \$50 billion.

The premiums for the primary insurance and excess reinsurance programs would be maintained in separate funds and used to pay for losses. If the funds were inadequate to pay for losses, the programs could borrow money from the U.S. Treasury to pay earthquake claims.

Mr. Crosby said the proposal will be introduced in Congress in early 1988 as the Federal Catastrophe Insurance and Reinsurance Corp. Act. The proposal is supported by the Alliance of American Insurers, the American Insurance Assn., the NAI, American International Group Inc. and State Farm Insurance Cos.

- The NAIC's Surplus Lines Task Force let die an exposure draft attempting to clarify which state has the authority to tax the premiums written by a surplus lines insurer, according to John George, Alaska's director of insurance, who heads the task force (*BI*, Aug. 10).

The task force also referred to an

**'Companies and industry don't have the power to catch criminals,' Mr. McKenna says.**

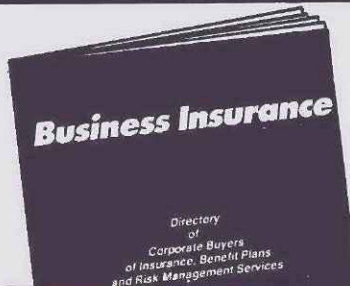
advisory committee for additional work a proposal for a standard trust agreement between states and surplus lines insurers.

- Members of the NAIC Workers Compensation Task Force agreed that workers comp will be a big issue next year.

The task force charged its advisory committees to look at a variety of issues, including loss ratios, competitive rating, safety in the workplace, investment income, cancellation and non-renewal provisions of insurance policies, occupational disease and health care cost containment. ■

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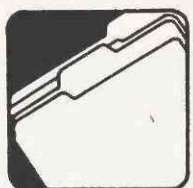
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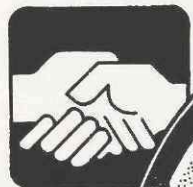
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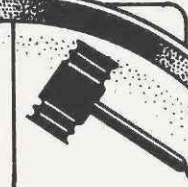
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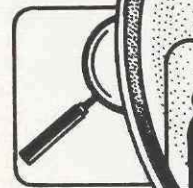
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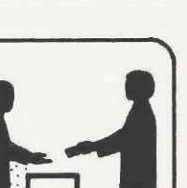
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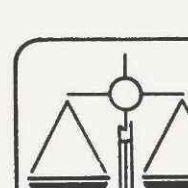
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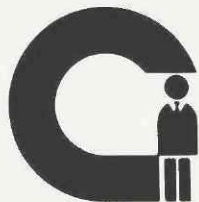
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## Texas decision

Continued from page 2

"I think the appellate court decision is so erroneous that the (Texas) Supreme Court will grant a writ in this case" and hear it, said Mr. Wilcox.

Insurance industry observers say that if the trial court verdict had been upheld, it could have had a devastating impact on the market for brokers' errors and omissions liability insurance.

In addition, they say the trial court decision could have caused agents and brokers to avoid placing business with lower-rated insurance companies.

According to the appellate court decision and the amicus brief, Higginbotham placed a multiperil policy covering the bowling alley with Proprietors in 1979.

The coverage was maintained after Mr. Greer purchased the bowling alley in 1980.

However, when the brokerage submitted Mr. Greer's claim to Proprietors after the May 1981 fire, it received a \$490,000 check that later bounced because of the insurer's insolvency.

Mr. Greer sued Higginbotham charging negligence and misrepresentation and, in August 1986, a Harrison County District Court jury awarded him \$772,000 for damages as well as loss of equity, lost profits and attorneys' fees.

While the jury had found for Mr. Greer on both the negligence and misrepresentation causes of action, the trial court judge disregarded the misrepresentation finding but left the award intact.

The appellate court found the lower court judge correct in voiding the misrepresentation verdict but also ruled there was no evidence of negligence by Higginbotham.

"The general rule is that an insurance agent or broker is not a guarantor of the financial condition or solvency of the company from which he obtains insurance," said the decision, written by appellate court Chief Justice William J. Cornelius.

If a company is solvent when the policy was procured, "its subsequent insolvency generally does not impose liability on the agent or broker," according to the six-page decision.

The only scenarios in which the agent would be liable is if at the time the policy is placed or at a later time when the policyholder could still be protected, the agent knows—or should know—facts or circumstances "which would put a reasonable agent on notice that the insurance presents an unreasonable risk," the decision says.

"Greer attempts to avoid the rule here by arguing that this is not an insurer insolvency case but rather a case of an agent's overall negligence in failing to provide his client the best available insurance at the best price," the decision states.

"The only damage he claims, however, is his loss due to the insurer's insolvency.

"He has not alleged or proven that Higginbotham either failed to procure a policy or allowed it to lapse, or that the PIC policy failed to provide full coverage or contained unwarranted exclusions or cost more money than it should have," Justice Cornelius wrote in the decision.

There is no evidence to support the jury's finding that Higginbotham was negligent, the appeals court concluded.

In addition to holding a B-plus Best's rating when the policy was written, PIC was paying its claims

promptly and distributing dividends. It had also made an underwriting profit the year before and was an admitted insurer in Texas, the ruling points out.

The decision also analyzed testimony given by Ronald Horne, a professor at Baylor University and an expert witness who testified on Mr. Greer's behalf.

Mr. Horne, according to the decision, stated that PIC's B-plus Best's rating for 1979 and 1980 put it in the lower 25% of Best's rated companies for that year.

"Horne observed, however, that the rating had leveled off for four years in a row, which he stated was a sign of stability," the court said. It added that nothing in Mr. Horne's testimony indicates Higginbotham should have known PIC presented an "unreasonable risk."

The facts in the case also demonstrate that "Greer selected the insurance he wanted," the court said, pointing out there is no evidence to support the charge that Higginbotham was guilty of misrepresentation.

Mr. Greer, who received a \$50,000 claims payment from the Texas' property/casualty insurance guaranty fund, noted he must repay \$440,000 in debt caused by PIC's insolvency.

"It doesn't seem fair to me that someone is not liable for that money," said Mr. Greer. "I just had my whole life snuffed flat on the ground and it doesn't seem fair."

Ms. Burkley said that while she is sympathetic to Mr. Greer's plight, his problems primarily are caused by the \$50,000 cap on payments by the Texas guaranty fund.

Brokers should not be used as "deep pockets" in cases of insolvency, Ms. Burkley said. A ruling that a broker was negligent in placing business with a B-plus-rated company that had given no public indication that it had problems would have been

**'The general rule is that an insurance agent or broker is not a guarantor of the financial condition or solvency of the company from which he obtains insurance,' the decision says.**

"very, very scary and unfair to insurance agents."

Because the insurer became insolvent after the policy was written and the loss occurred does not mean the insurance agent had done anything wrong, said Herbert Boyland, of Kenley & Boyland in Longview, Texas, which represented Higginbotham & Associates.

Officials at the agency could not be reached for comment.

Ernest Stromberger, executive director for the Independent Insurance Agents of Texas, which was a member of the coalition of trade associations that filed the amicus brief, said: "Our interest in the case was the impact that it would have on errors and omission and liability insurance rates for agents."

He said E&O insurers would have had a "real problem" in determining how to handle brokers' increased liability if the jury's verdict had set a precedent, "and none of the alternatives were pleasant." Mr. Stromberger said E&O insurers could exclude coverage in all cases involving insurer insolvencies or exclude coverage in instances in which a policy is placed with an insurer with a low Best's ratings.

If the lower court decision were upheld, it also could have caused brokers to avoid placing business with lower-rated companies, which would drive these insurers out of business and cause capacity problems, said Mr. Stromberger.

But Mr. Greer's attorney, Mr. Wilcox, denounced this contention as "propaganda."

There were 14 companies rated "A" or better that would have been willing to write this business and should have been contacted, Mr. Wilcox said. "The court didn't really address the duty of an agent." ■

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**OCT. 5-6. ERISA II: Preparing for Major Pension & Benefit Changes in the 100th Congress** conference in Washington, D.C., sponsored by the National Employee Benefits Institute; no charge to single NEBI member representatives; \$100 for additional NEBI member representatives; \$395 for non-members. National Employee Benefits Institute, 2445 M St. N.W., Suite 400, Washington, D.C. 20037; 800-558-7258.

**OCT. 5-6. Health Care Cost Containment** workshop in Boston, sponsored by the Health Research Institute; \$495. Also Oct. 26-27 in San Francisco; Nov. 9-10 in New York; and Dec. 7-8 in Chicago. Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

**OCT. 5-7. Insurer Solvency Assessment** conference in London, sponsored by the Insurance & Reinsurance Research Group Ltd.; 506 pounds (approximately \$832). Caroline Atkinson, Insurance & Reinsurance Research Group Ltd., Bridge House, 181 Queen Victoria St., London EC4V 4DD; 01-236-2175.

**OCT. 5-7. Employee Benefits: Concepts, Planning and Administration** course in Denver, sponsored by the Risk & Insurance Management Society Inc.; \$540 for RIMS members; \$640 for non-members. Fran Jordan, Risk & Insurance Management Society Inc., 205 E. 42nd St., New York, N.Y. 10017; 212-286-9292.

**OCT. 6. Quality Assurance & Utilization Management: Partners in Managed Care** seminar in Monterey, Calif., sponsored by the American Medical Care & Review Assn.'s Medical Issues Section; \$250 for AMCR members; \$350 for non-members. American Medical Care & Review Assn., 5410 Grosvenor Lane, Suite 210, Bethesda, Md. 20814; 301-493-9552.

**OCT. 6-7. Product Safety and Liability Prevention: The Role of Warnings** course in Madison, Wis., sponsored by the College of Engineering at the University of Wisconsin-Madison; \$895; \$645 less coursebook. Engineering Registration, The Wisconsin Center, 702 Langdon St., Madison, Wis. 53706; 800-262-6243; 800-362-3020 within Wisconsin.

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**OCT. 6-7. Personnel Law Update 1987** seminar in Boston, sponsored by the Council of Education in Management; \$495; \$475 each for two or more from the same organization. Also Oct. 7-8 in Denver; Oct. 13-14 in Philadelphia; Oct. 14-15 in Chicago; Oct. 20-21 in Los Angeles; Oct. 27-28 in Seattle; Nov. 4-5 in Detroit, Morristown, N.J., Honolulu; Nov. 10-11 in San Diego; Nov. 17-18 in San Jose, Calif., Minneapolis; Dec. 1-2 in Tampa, Fla.; and Dec. 8-9 in Phoenix, Ariz. Karen Nelson, Council on Education in Management, 321 Lennon Lane, Walnut Creek, Calif. 94598; 415-934-8333.

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**OCT. 7. Agency Captives** seminar in Austin, Texas, co-sponsored by Rossiter Blumentritt Consultants and Cayman Business Services; \$50; \$65 at the door. Rossiter Blumentritt Consultants, P.O. Box 12844, Austin, Texas 78711; 512-472-7659.

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**OCT. 7-9. American Medical Care & Review Assn.'s 16th Annual Conference and House of Delegates** in Monterey, Calif.; \$575 for AMCR members; \$675 for non-members; \$175 for spouses/guests. American Medical Care & Review Assn., 5410 Grosvenor Lane, Suite 210, Bethesda, Md. 20814; 301-493-9552.

**OCT. 7-9. Recognition of Accident Potential in the Workplace Due to Human Factors** course in Los Angeles, sponsored by the Institute of Safety & Systems Management at the University of Southern California; \$435. Institute of Safety & Systems Management, USC, Office of Extension and In-Service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

**OCT. 7-10. Ninth Annual Meeting of the American Society for Healthcare Risk Management of the American Hospital Assn.** in New Orleans; \$400 for ASHRM members and

Healthcare Risk Management Council of New Orleans members; \$340 for additional members from the same organization; \$470 for non-members (\$70 can apply toward ASHRM membership); \$410 for additional non-members from the same organization; \$145 for full-time students. American Hospital Assn., P.O. Box 98946, Chicago, Ill. 60693; 312-280-6083.

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**OCT. 8-9. Labor/Management Cost Containment** workshop in Boston, sponsored by the Health Research Institute; \$495. Also Oct. 8-9 in Boston; Nov. 12-13 in New York; and Dec. 10-11 in Chicago. Health Research Institute, 1600 S. Main Plaza, Suite 170, Walnut Creek, Calif. 94596; 415-676-2320.

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**OCT. 9. Current Trends in the Legal Environment of Workers Compensation** seminar in New York, sponsored by the National Council on Compensation Insurance; \$165 for NCCI members; \$205 for non-members. Mary Ellen Robinson, National Council on Compensation Insurance, 1 Penn Plaza, New York, N.Y. 10119; 212-560-1066.

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**OCT. 12-16. Management and Administrative Skills for the Occupational Safety and Health Professional** course in Los Angeles, sponsored by the Institute of Safety & Systems Management at the University of Southern California; \$735. The Institute of Safety & Systems Management, University of Southern California, Office of Extension and In-Service Programs, 3500 S. Figueroa St., Suite 202, Los Angeles, Calif. 90007; 213-743-6523.

**OCT. 14. Complying With COBRA: The Final Regulations** workshop in Chicago, sponsored by the Illinois State Chamber of Commerce; \$45 for ISCC members; \$70 for non-members. Carol Jensen, Illinois State Chamber of Commerce, 20 N. Wacker Drive, Chicago, Ill. 60606; 312-372-7373.

**OCT. 14-15. Constructing, Processing and Marketing Variable Insurance Products** conference in New York, sponsored by the Institute for International Research Inc.; \$895. Institute for International Research Inc., 310 Madison Ave., Suite 1212, New York, N.Y. 10017; 800-345-8016; 212-883-1770.

**OCT. 14-15. Emerging Technology-The Impact on Product Safety, Insurance and Critical Business Decisions** conference in Stamford, Conn., co-sponsored by the National Safety Council and the Engineering & Safety Service of the American Insurance Services Group Inc.; \$300 for members; \$400 for non-members. Edward S. Charkey, American Insurance Services Group Inc., 85 John St., New York, N.Y. 10038; 212-669-0400.

**OCT. 14-16. New Age Retirement Planning** workshop in New Orleans, sponsored by Retirement Advisors; \$495; \$395 if registration is made three weeks in advance. Also Nov. 11-13 in New York. Retirement Advisors, 919 Third Ave., New York, N.Y. 10022; 212-421-2400.

**OCT. 14-16. Fundamentals of Property and Casualty Reinsurance Agreements** conference in New York, sponsored by Executive Enterprises Inc.; \$975; \$875 for additional registrants from same organization. Also Nov. 11-13 in Los Angeles. Executive Enterprises Inc., 22 W. 21st St., New York, N.Y. 10010-6904; 800-223-0787; 800-831-8333 within New York.

**OCT. 15. Risk Management and Safety Techniques for Public Agency Recreation Programs and Facilities** seminar in Anaheim, Calif., sponsored by Risk Management Seminars; \$150 in advance; \$175 at the door. Also Oct. 29 in Pleasanton, Calif.; Nov. 18 in Sacramento, Calif.; Nov. 19 in Fresno, Calif. Risk Management Seminars, P.O. Box 1601, Sonoma, Calif. 95476-1601; 415-943-1405.

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# Earthquake facility issues quotes

Continued from page 2

Commercial insurers currently offer earthquake limits of \$100 million to \$150 million, depending on the risk, Mr. Clements observed.

Limits offered by ELF also will increase as the facility's capital base grows, he added.

When the insurer's capital reaches the \$1 billion mark, ELF will offer limits of \$100 million, and capacity will increase in \$25 million increments for each \$500 million in additional capital accumulated.

For example, ELF will offer limits of \$125 million when capital reaches the \$1.5 billion mark, \$150 million when capital reaches the \$2 billion mark and \$175 million when capital reaches the \$2.5 billion mark, Mr. Clements explained.

The policies issued by ELF will all expire on the same date, 10 years from the facility's inception. Companies joining four years after ELF is up and running, then, would only be able to buy coverage for a six-year period at a pro-rated premium.

The program is designed to run only for a 10-year period, after which ELF will be liquidated and policyholders will recover their original contributions plus interest, less the expenses of operating the facility, according to Mr. Clements, who described ELF as reassembling a trust fund more than a policyholder-owned insurance company such as A.C.E. Insurance Co. Ltd. or X.L. Insurance Co. Ltd.

After 10 years, ELF's policyholders may decide to incorporate a new facility to continue the excess quake coverage program.

ELF's liquidation will allow underwriters to review the adequacy of the facility's one-time premiums and adjust them if necessary for a successor facility, Mr. Clements said.

He added that the one-time, 10-year premium is expected to be similar to—or less than—the cost of earthquake coverage written by commercial insurers if the coverage were available over a 10-year period, though he would not say what an average premium might be.

Premium quotations have been issued to corporations with insured values ranging from \$213 million to \$13 billion, he said.

ELF will earn one-tenth of the 10-year premium each year.

Morgan also is offering a premium financing program allowing policyholders to borrow funds to pay for the coverage at a guaranteed rate, Mr. Clements said.

ELF will be managed by Marsh & McLennan (Barbados) Ltd., though Jack W. Cates, former president and chief executive officer of Industrial Risk Insurers, will act as ELF's Bermuda-based underwriting consultant, according to Mr. Clements.

M&M will receive an annual fee for managing ELF, while Morgan will receive a fee based on initial capital and premiums raised for the facility, he said.

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# NYIE syndicates

Continued from page 1

Under exchange rules, syndicates considering withdrawal in 1988 had to file notices of their intent by Sept. 1. Such notices may be provisional, and syndicates filing them may later decide to remain on the exchange.

By Oct. 1, syndicates definitely planning to withdraw must have ceased underwriting and notified other exchange members.

Brougher and Wall Street Investors last week had not yet decided whether they will follow through on the notices of intent and actually withdraw, according to Betsy Brougher-Ayers, president of North Atlantic Treaty Managers Inc., which acts as Brougher Syndicate's manager and provides some management services to Wall Street Investors.

Brougher Syndicate was the exchange's 10th-largest based on 1986 gross premium volume of \$9.6 million. Wall Street Investors is currently running off its business, Ms. Brougher-Ayers said.

Another syndicate managed by North Atlantic Treaty, Kansas-Brougher Syndicate Inc., has not filed a notice of intent to withdraw, she added.

Home Re Syndicate, however, will definitely withdraw from the exchange, according to James M. Meenaghan, president of The Home Insurance Co.

"It has not proven to be a really worthwhile activity for us," Mr. Meenaghan said. "We have a very fine reinsurance company in (U.S. International Re Inc.) to conduct our reinsurance activities, and there really is not much advantage to be gained by being there."

Home Re Syndicate was NYIE's fifth-largest based on 1986 gross premiums of nearly \$13 million.

Five other syndicates had earlier confirmed filing notices of intent to withdraw: The 1792 Co., perennially the exchange's largest syndicate; Allianz Syndicate Inc., the exchange's ninth-largest in 1986; Fremont Syndicate Inc.; Gamma Re Syndicate Inc.; and Golden Hill Syndicate Inc. (BI, Sept. 21.)

Of these, Fremont and Golden

Hill have confirmed they definitely will withdraw from the exchange, syndicate officials say.

Exchange sources say that two other syndicates also filed notices of intent, though officials of these syndicates could not be reached to confirm the notices.

Syndicate observers express the hope that a few of the syndicates filing notices may ultimately decide to stay on the exchange.

Meanwhile, Brougher Syndicate and Wall Street Investors filed their lawsuit against the security fund and the exchange Sept. 18, while Senate Syndicate filed its suit Sept. 21.

All three syndicates have obtained temporary restraining orders blocking drawdown of their security fund contributions pending a decision on the petitions, according to Elliott M. Kroll, a partner with the New York firm of Kroll & Tract, representing the three syndicates.

Citing several sections of the exchange constitution, the two petitions charge the security fund and the exchange did not follow proper procedures in the drawdown.

Among other things, the constitution provides that the security fund will cover "unpaid contractual obligations" of insolvent underwriting members, the petitions point out.

Unpaid obligations are defined as those that the New York insurance superintendent certifies as unpaid after the application of the insolvent syndicate's capital and surplus and other assets, including its initial \$500,000 security fund deposit. The constitution also provides that claims against the security fund will be paid first from the surcharge fund and then, to the extent necessary, from the deposit fund.

The security fund board informed members Sept. 3 that it would draw down the syndicates' \$500,000 deposits after determining—on the basis of the actuarial report by the Tillinghast Division of Towers, Perrin, Forster & Crosby Inc.—that the surcharge fund would not be adequate to cover the net liabilities of the exchange's insolvent syndicates.

Of eight syndicates declared insolvent by the exchange's board of governors since last summer, only one—Heartland Group Inc.—has been ordered liquidated by a New York court.

Liquidation petitions are pending against three others: Burt Syndicate Inc., First New York Syndicate Corp. and Realex Group N.V. In addition, the exchange recently asked the New York Insurance Department to petition for the liquidation of KCC New York Syndicate Corp., Pine Top Syndicate Inc and U.S. Risk Inc.

An eighth syndicate, Candor Syndicate N.V., has obtained an injunction against liquidation proceedings.

Brougher, Wall Street Investors and Senate note in their lawsuits that the deposits were drawn down despite the fact that the security fund has not yet incurred any liabilities, since the New York superintendent has not yet certified any of the insolvent syndicates' obligations as unpaid.

The deposits also were drawn down before exhaustion of the surcharge fund, the petitions note.

At a Sept. 8 meeting of underwriting members, security fund directors said that the drawdown was based on the results of the Tillinghast report, but "refused to identify the purportedly insolvent underwriting members or to provide documentary proof of their insolvency," the suits say.

Security fund directors also said at the meeting that they intend to use the surcharge and deposit funds to buy reinsurance for the runoff of the insolvent syndicates' liabilities "from a foreign, non-admitted underwriter or underwriters with no office and place of business in (the) United States," the suits allege.

The exchange is currently working on a bailout plan for the insolvent syndicates that would involve consolidation of their assets and liabilities into a single runoff syndicate known as Syndicate 100 (BI, Aug. 31).

Although the security fund drawdown was unrelated to the Syndicate 100 plan, exchange sources have said that security fund money could be used to support the plan.

The three syndicates claim they would be irreparably harmed if their funds are allowed to be paid to non-admitted reinsurers, adding that they could not recover damages from the exchange or NYIE Security Fund Inc., since both are not-for-profit corporations.

The drawdown also would hurt the three syndicates' ability to do

business, since they—like all exchange syndicates—include their \$500,000 deposits as part of their surplus, the suits claim.

The petitions ask for an injunction barring the exchange and the security fund from using the three syndicates' contributions to the deposit fund and the surcharge fund.

However, in court papers filed last Tuesday, Mr. Foley asserted that the security fund board had acted within its authority under the exchange constitution.

The constitution provides that if the board "determines that the surcharge fund is, or is likely to be, insufficient to satisfy the obligations of the security fund," it will notify the exchange or banks holding syndicates' deposits to transfer the deposits to the security fund.

The board is empowered to require transfer of as much of the deposits "as it deems necessary or appropriate to reasonably assure that the security fund will be able to meet its obligations."

After review of the draft Tillinghast report, the security fund board concluded that the surcharge fund would be inadequate and that the all of the deposits should be drawn down, Mr. Foley said in an affidavit.

The Tillinghast report found "the liabilities of six of the eight insolvent underwriting members less their assets exceeded the combined surcharge fund and deposit fund by a ratio of at least 3-to-1 with room for possible deterioration," the affidavit says.

The exchange constitution includes no provision allowing syndicates to recover any part of their contributions to the surcharge fund, Mr. Foley's affidavit adds.

Mr. Foley denied in the affidavit that he or another security fund director present at the Sept. 8 meeting ever said that they intended to use security fund assets to buy reinsurance from a non-admitted reinsurer.

When Mr. Kroll asked at the meeting for the names of the insolvent syndicates, it was pointed out that they had been identified in the Aug. 31 issue of *Business Insurance*, according to the affidavit. Peter Bickford, former exchange vp and general counsel, then read the names aloud, the affidavit says.

In papers filed with the affidavit, the security fund seeks court orders dismissing the three syndicates' petitions.

Meanwhile, the exchange has informally asked the syndicates to drop the exchange as a respondent in the petitions, in part because the security fund board and not the exchange board decided on the drawdown and because the exchange has no control over security fund assets, according to A. William Urquhart, exchange vp and general counsel.

He added that if the exchange is not removed as a respondent, it also will file papers to dismiss the petitions.

Separately, exchange syndicates reported total gross written premiums of \$106.8 million for the first half of 1987, down 23.5% from \$139.6 million in the first half of 1986.

However, the syndicates reported net income of \$3.7 million, compared with a loss of \$8.4 million for the year-earlier period. The aggregate combined ratio for the first six months of 1987 was 116.7%, compared with 124.1% for all of 1986.

Experience was better for the exchange's active syndicates, which accounted for 80% of first-half gross premiums and which reported net income of \$6.6 million and a combined ratio of 102.2% for the first six months.

Aggregate policyholders surplus for all exchange syndicates totaled \$244.7 million at June 30, down slightly from \$246.2 million at March 31.

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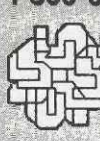
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# Maine officials search for comp crisis solution

By MEG FLETCHER

AUGUSTA, Maine—Maine officials are grappling with how to keep the state's workers compensation market operating in the wake of announcements from insurers writing nearly 60% of the market that they plan to withdraw from the state.

But there is no easy way to resolve what a spokesman for Gov. John R. McKernan Jr. describes as "obviously serious problems" in the state's workers compensation market, observers say.

Last week, Maine Insurance Superintendent Joseph A. Edwards approved Aetna Casualty & Surety Co.'s plans to withdraw beginning Dec. 31, bringing to 11 the number of insurers or insurer groups that will stop accepting workers compensation risks through the state's workers compensation assigned risk plan at year-end because of inadequate rates (BI, Sept. 21).

Those 11 insurers represent about 27% of the Maine market, according to figures released by the insurers and the Insurance Department.

In addition, Mr. Edwards is still considering requests by three affiliates of Boston-based Liberty Mutual Insurance Cos., which write about 32% of the state's workers compensation risks, to pull out of the market.

In addition, three more of the 100 remaining insurers have scheduled appointments with Mr. Edwards, possibly to announce their intentions to withdraw, he said.

Insurers contend that workers compensation insurance in Maine is highly unprofitable because of inadequate rates and substantial losses from employers in the state's assigned risk plan, through which most Maine employers buy their insurance. Mr. Edwards held a hearing last week on rate adequacy but made no decision.

The assigned risk plan is critical to Maine's workers compensation market because no insurer has written voluntary policies since June, Mr. Edwards said. If the voluntary workers comp market does not return, all employers in the state will be in the assigned risk plan by June 1, 1988, he said.

In 1986, insurers participating in the assigned risk plan wrote coverage for 80% to 90% of all employers in the state, but those employers paid only 46.4% of all workers comp premiums, according to Philip Borba, assistant vp of the National Council on Compensation Insurance. The insurers must accept risks from the plan in proportion to their share of the voluntary market.

"It has just hit home that insurance companies are moving out," said a spokesman for Senate Majority Leader Nancy Randall Clark. "There is a movement to do something now to prevent that."

However, Peter Burton, director of government affairs in New England for the NCCI, said: "The Legislature is as polarized on the issue today as they have been over the past few years. You don't see any coming together of their minds."

Despite the crisis situation, business leaders are still seeking reforms to lower workers compensation rates, while labor spokesmen refuse to accept any reduction in benefits, Mr. Burton said.

The governor and most state legislators consider the only other alternative—establishment of a state fund—a last resort, according to spokesmen for the governor and leaders of the Democratic-controlled Legislature.

"A monopolistic state fund is not a long-term solution," said Edward Johnston, chairman of The Workers' Compensation Reform Committee, a broad-based employer coalition. A competitive state fund is not feasible if there is no voluntary market with which to compete, he added.

Gov. McKernan is reviewing his options and does not intend to discuss workers comp during a special Legislative session called for Oct. 9, the governor's spokesman said.

However, the insurers' announced withdrawals could force the governor's hand sometime before the Legislature reconvenes in January, he said.

"I think everyone believes that it (a special session) will happen," said Joseph DiGiovanni Jr., vp of the New England region for the American Insurance Assn.

Mr. Edwards is developing legislative proposals to help cope with the situation, Mr. DiGiovanni said.

Mr. Edwards declined to comment on his specific proposals. However, he said one option is to lower costs by reducing benefits, the number of persons who qualify for benefits, the duration of benefits, administration costs, insurer inefficiency and losses.

There is really no financial incentive for employers to practice loss control to cut workers compensation costs, Mr. Johnston said.

Employers are not hurt by poor loss experience because rates in the assigned risk plan are capped. And, employers with good loss experience do not get a rate reduction, because insurers feel they are not being allowed to charge enough to begin with.

Employers with good loss histories that are forced into the assigned risk plan because of a lack of market may find that their insurance costs climb 600% to 800%, the employer coalition's Mr. Johnston said.

The situation in Maine is "dismal," an Aetna spokesman said.

"It is deteriorating as each moment ticks on," the NCCI's Mr. Burton said.

Insurers, which have complained that rates were inadequate in recent years, say that they are about 290% below what they should be.

Insurers' losses, expenses and dividends exceeded direct premiums by 118.9% in 1986, according to NCCI's Mr. Borba.

Insurers' losses, expenses and dividends exceeded premiums by 57.98% between 1976 and 1985, Mr. Borba said.

"We believe that the Maine workers compensation system is economically unsound," said a statement by Raymond W. Stahl, senior vp of Travelers Corp.

For example, over the past three years, Travelers says its total losses in the Maine work comp market were \$10 million greater than its earned premiums.

"It pays out much more than it allows to be taken in."

"The Maine system pays first-class benefits at fourth-class prices," Mr. Stahl said.

"It is virtually impossible to operate without any expectation of profitability," he said.

Contributing to the insurers' ire is a 1985 law that decreased rates 8% that year and froze rates in 1986.

The law allowed the insurers to increase rates up to 10% in both

1987 and 1988.

However, a spokesman for Aetna—which says it lost more than \$38 million on Maine workers comp business, excluding investment income, in the past five years—said "the straw that broke the camel's back" was a May Kennebec County Superior Court decision.

That ruling said that as long as insurers could leave the state, they could not claim the state was confiscating their property without due process by controlling rates legislatively and forcing them to write assigned risk plan business without an adequate rate of return.

Liberty Mutual and the NCCI, which were the plaintiffs in the case, are appealing it to the state Supreme Judicial Court.

The court case prompted several insurers to file their withdrawal plans, most of which the Insurance Department accepted.

However, the requests by two Liberty Mutual affiliates—Liberty Mutual Fire Insurance Co. and Liberty Mutual Insurance Co.—were rejected on Aug. 28 primarily because the affiliated insurers—the largest workers comp market in the state—wanted to cancel policies and because its departure would significantly disrupt the marketplace.

"We are being penalized with this 'disruption of the market' argument because we have been taking more business and more losses than anyone else in the system," said Liberty Mutual attorney Tom Driscoll.

Liberty Mutual units have lost \$130 million after investment income on Maine work comp business since 1981, the company says.

In addition, the Liberty Mutual companies contend that market disruption should not be considered a factor in approving a withdrawal plan, Mr. Driscoll said.

At a department hearing last week, Liberty Mutual protested Mr. Edwards' rejection of two subsidiary insurers' plans to leave the assigned risk plan market earlier this month.

The subsidiaries are still participating in the state's assigned risk plan after a court order stymied their efforts to cancel work comp policies written through the assigned risk plan.

However, the subsidiaries last week canceled all policies they wrote in the voluntary market. Those policyholders that were unable to obtain insurance from other underwriters or did not self-insure were put into the state's assigned risk plan the next day, Mr. Edwards said.

Meanwhile, Liberty Insurance Corp., another affiliate writing Maine workers comp insurance, filed a plan to withdraw from the state after its assigned risk policies expire.

**'We believe that the Maine workers compensation system is economically unsound,' says Travelers' Mr. Stahl. 'The Maine system pays first-class benefits at fourth-class prices.'**

## Update

### Asbestosis trigger decided

Continued from page 2

The Sept. 16 opinion involved a dispute between Cincinnati-based manufacturer Eagle-Picher Industries Inc. and American Motorists Insurance Co., a unit of Long Grove, Ill.-based Kemper Group, over when an asbestos-related disease is manifested for purposes of triggering coverage.

This latest ruling expands on the 1st Circuit's ruling in 1982 that manifestation takes place when the disease is "reasonably capable of diagnosis" (BI, July 12, 1982).

Following the 1982 decision, Eagle-Picher and AMICO were unable to resolve how to apply the ruling.

Eagle-Picher filed a motion in the U.S. District Court in 1983, asking it to rule that asbestos-related diseases were manifested six years prior to diagnosis, while AMICO argued that manifestation should be determined on a case-by-case basis.

In 1986, a U.S. District Court judge in Boston agreed with Eagle-Picher's interpretation of the manifestation standard. AMICO appealed this ruling to the 1st Circuit.

"We count this as a win," said Eagle-Picher General Counsel James Ralston, though he noted the company did not get everything, including the amount of interest, it wanted.

"We reviewed the opinion and are presently considering our options," an attorney for AMICO said last week.

AMICO wrote a total of \$15 million in coverage under three \$5 million policies as a first-layer excess liability insurer for Eagle-Picher between June 1, 1973, and Oct. 10, 1975.

Eagle-Picher currently faces about 55,000 asbestos claims and has approximately \$150 million to \$160 million in insurance coverage remaining, Mr. Ralston said.

### Railroads face \$12 billion suit

NEW ORLEANS—Three class-action lawsuits seeking more than \$12 billion in compensatory and punitive damages have been filed against several railroads and other defendants by the residents of Gently, La., forced to evacuate their homes following a railroad tank chemical fire.

A \$12 billion class-action suit—seeking \$2 billion in compensatory and \$10 billion in punitive damages—was filed Sept. 9—the day of the fire. Two additional class-action suits, seeking \$100 million and \$5 million, were filed several days later.

The suits name Jacksonville, Fla.-based CSX Transportation Inc.; Norfolk, Va.-based Norfolk Southern Corp. and affiliates Southern Railway Co. and The Alabama Great Southern Railroad; and Chicago-based Illinois Central Gulf Railroad Co.

Also named are tank car owner GATX Corp. of Chicago and two GATX subsidiaries; the New Orleans Terminal Co.; New York distributor Mitsui & Co. USA Inc.; and the city of New Orleans.

CSX is self-insured for up to \$25 million, a company spokesman said. But the spokesman would not comment on whether the Jacksonville, Fla.-based railroad was still a participant in Railroad Assn. Insurance Ltd., which writes excess liability insurance for railroads. Bermuda-based RAIL provides participants \$50 million excess of \$50 million liability coverage for third-party liability, evacuation, sudden and accidental pollution and liability under the Federal Employers Liability Act. CSX was a RAIL participant in November 1986 (BI, Nov. 3, 1986).

An ICG spokesman would not comment on the railroad's insurance program.

A Norfolk Southern spokesman was unavailable for comment. The \$12 billion suit alleges that after the fire erupted in a 30,000-gallon tank car of butadiene, the chemical leaked into nearby sewers and spread toxic fumes throughout the neighborhood, forcing the local residents to evacuate.

The National Transportation Safety Board is conducting an investigation into the incident, but no cause has yet been determined, said an NTSB spokesman.

There were no serious injuries or deaths reported, the NTSB spokesman said.

### Suit against clergy ruled valid

LOS ANGELES—The California Court of Appeals for the 2nd District has ruled that a suit alleging that church pastors were negligent in their counseling of a man who committed suicide is valid.

In the suit, *Nally vs. Grace Community Church of Sun Valley, Calif.*, Walter J. and Maria Nally blame the pastors of a fundamentalist church for not insisting that their son, 24-year old Kenneth Nally, seek psychiatric help when he revealed he intended to commit suicide, according to the appellate court decision. The Nallys originally filed suit in 1980.

A lower court dismissed the case, but that dismissal was later reversed. The case went to trial in the California Superior Court in 1985, but the court ruled the suit invalid.

The case now will be tried to determine whether the pastors were negligent in counseling the younger Mr. Nally, according to Edward Barker of Los Angeles, the attorney for the parents. Mr. Barker said the trial will begin sometime within the next year.

Damages have not yet been set. "As in any wrongful death case, we will argue damages to the jury," he explained.

### Briefly noted

The West Virginia Insurance Department has filed a petition to liquidate **Quality Insurance Co.** of Fairmont, W.Va., saying that the insurer was insolvent by \$15.1 million as of June 30. Quality entered voluntary rehabilitation in January. . . The Environmental Protection Agency said last week that very low levels of **dioxin**, a chemical linked to cancer, have been found in some paper products. But the EPA says there is no current evidence that the concentration of the chemical poses a health risk. The agency will study the matter further.

# Insolvency assessments pose cash-flow burden

By MYRON M. PICOULT  
Special to Business Insurance

SOME TIME AGO, we discussed the 51st state, the state of Insolvency. Much has occurred over the past few years, and we thought an update would be appropriate.

Since the inception of property/casualty insurance guaranty fund assessments in 1969, a little more than \$1.4 billion in insolvency assessments have been levied, excluding assessments made by the pre-assessment funds in New York and New Jersey. On a net basis, after refunds, the figure stands at a little more than \$1.2 billion. It should be noted that more than half of the assessments have been made of insurance companies that were declared insolvent in the past three years.



Mr. Picoult

Since 1969, 142 companies have been declared insolvent. There does not appear to be any pattern with respect to company size, amount of premiums written, lines written or jurisdiction. Sixty-two property/casualty insurer insolvencies have occurred since 1983, with about half centered in New York, Pennsylvania, California, Texas, Florida and Illinois. This mirrors the concentration of insurance companies in these states.

Another sobering fact is that five companies that became insolvent since 1978 have accounted for more than one-third of the net assessments: Carriers Insurance Co., Signal Insurance Co./Imperial Insurance Co., Reserve Insurance Co./American Insurance Co., Transit Casualty Co. and Ideal Mutual Insurance Co.

The Ideal Mutual insolvency has been the most costly to date, producing total guaranty fund assessments of \$170.4 million.

There were 16 property/casualty insurer insolvencies in 1986 compared with 21 in 1985. Thus far in 1987, seven companies have bit the dust.

Furthermore, the National Assn. of Insur-

ance Commissioners has indicated that almost 25% of all property/casualty companies are in potentially hazardous financial condition, based on the NAIC's Insurance Regulatory Information System. Under this system the NAIC develops 11 financial ratios. When four of an insurer's scores fall outside a specific range, the company is targeted by IRIS as one that faces financial problems.

Our guess is that several of the newer insolvencies—including those of Mission Insurance Co., Integrity Insurance Co., Transit Casualty and Midland Insurance Co.—could result in another \$1.2 billion in guaranty fund assessments over the next few years. Thus, the property/casualty insurance industry's balance sheet is not as healthy as some people believe. It remains to be seen if the guaranty funds can withstand the onslaught.

Guaranty fund assessments are an additional financial burden that property/casualty insurers have to bear. Some states allow insurers to recover assessments made by the guaranty funds through rate hikes. Competitive pressures may preclude some companies from seeking the recovery on a timely basis. Other states allow insurers to reduce the cost of the assessments by offsetting the assessments against premium taxes, usually over a five-year period.

The point of the above is that there is an additional cash-flow burden that the industry will have to bear over the next few years if we are correct in our assumptions about another \$1.2 billion being assessed just from known solvencies. This will occur at the same time that a material change in insurer taxation is occurring. For the first time in a long time, property/casualty insurers are going to be writing real checks.

All of this is further exacerbated by the slowdown in premium revenue. In addition, there is the ever-looming presence of reinsurance recoverable write-offs that could cost the industry at least \$10 billion to \$20 billion, according to some observers.

We sought to review the midyear guaranty fund assessments of 15 major property/casualty insurers. Such assessments are not necessarily indicative of the full-year figures. However, we have had a relatively difficult time obtaining the information from company representatives. Given all the noise about enhanced systems capabilities in the industry, we find it ironic that this information was not readily available. One would think that company chairmen and chief financial officers would like to know the up-

dated impact of bailing out insolvent companies.

Excluding the extremes and with data from only 10 of the 15 companies we attempted to contact, the average assessment was up about 32% from a year earlier. The assessments themselves ranged from just less than \$1 million to almost \$8 million.

We have been arguing that more attention must be paid to insurer's balance sheets. Strong balance sheets will permit specific companies to maintain underwriting integrity. The Tax Reform Act of 1986 is not kind to companies that underwrite at a loss.

In any event, many insurers with an underwriting loss will find that between the recovery of the unearned premium reserve and the discounting of loss reserves, they will be in a taxable position and, hence, a tax payment will be due. Net operating loss and "Fresh Start" adjustments will not last forever.

## USLIFE Corp.

USLIFE Corp. of New York announced that it has filed a registration statement with the Securities and Exchange Commission for \$100 million of notes due 1997 with warrants to purchase common stock.

Chairman, President and CEO Gordon E. Crosby Jr. said, "The prospective sale of these units will provide us with funds which may be used to repay short-term bank debt and for other corporate purposes."

USLIFE Corp.'s common stock was trading at \$38.25 a share on Sept. 24.

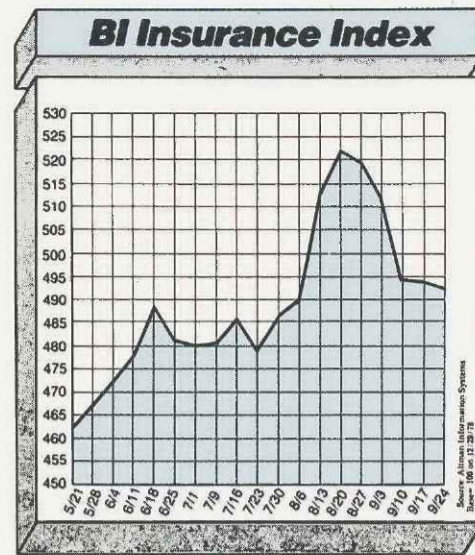
Additionally, USLIFE has notified holders of its 12% notes due Oct. 15, 1989, that it will redeem the issue, without penalty, on Oct. 15.

## Zurich Insurance Group

Net premiums written by Zurich Insurance Group-U.S. increased 18.7% for the first six months of 1987 to \$645.8 million from \$543.9 million.

The Schaumburg, Ill.-based property/casualty group experienced a first-half net underwriting loss of \$2.4 million, an improvement over a \$47.6 million loss for the same period of 1986.

Rolf Hueppi, chief operating officer of Zurich's worldwide operations, announced the results, saying "the reduction of the combined ratio from 1986's level of 107.7% to 100.3% is very encouraging."



Insurance industry stocks posted another slight decline this week as the Business Insurance stock index dropped 1.5 points to 492.8 on Sept. 24 from 494.3 on Sept. 17. Advancing issues were led by: Aneco Reinsurance Co. Ltd., up 7.7%; Liberty Corp., up 5.9%; Farmers Group Inc., up 5.6%; Washington National Corp., up 3.7%; and General Re Corp., up 3.5%. Declining issues were led by: Provident Life & Accident Insurance Co., down 8.9%; Trenwick Group Inc., down 6.9%; Hartford Steam Boiler Inspection & Insurance Co., down 6.7%; Durham Corp., down 6.0%; and Frank B. Hall & Co. Inc., down 5.0%. Issues showing the most activity during the period were: USF&G Corp., with 5.5 million shares traded; Sears Roebuck & Co., with 3.1 million shares traded; and ITT Corp., with 2.3 million shares traded. The Business Insurance index, dropping 0.3% for the week, trailed the performance of the major market averages. The Standard & Poor's 500 posted a 1.5% increase, up 4.8 points; the Dow Jones 30 Industrials saw a 1.5% increase, up 38.5 points; and the New York Stock Exchange composite was up 1.3%, with a 2.4-point increase.

## British Issues

Sept. 23 Companies	Price pence	P/E	Div. pence	Yield %	1 Week High-Low pence	
					High	Low
Comml Union	410	15.2	17.8	4.3	412	389
Genl Accident	1125	11.5	38.3	3.4	1147	1093
Gdn Royal Exch	1070	13.4	46.5	4.4	1083	1033
Royal	583	9.9	21.2	3.6	589	567
Sun Alliance	1145	12.6	32.2	2.8	1150	1120

Brokers	Price	P/E	Div.	Yield	High-Low
CE Heath	510	15.2	34.5	6.7	512-504
Hogg Robinson	213	11.8	9.6	4.5	220-210
JH Minet	400	14.5	12.9	3.2	433-400
Sedg Grp	290	16.8	16.4	5.7	297-284
Willis Faber	353	13.6	14.8	4.2	368-353

Source: Philip Olsen/Alan Clifton, Insurance Industry Specialists Kitcat & Aitken Stockbrokers, London

# BI Industry Stock Report

SEPT. 24, 1987 9/18/87 THRU 9/24/87

	Weekly Price	% change	Year to Date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value	Weekly Price	% change	Year to Date % change	Annual		Vol.(000)	\$ Div.	% Yield	P/E	Book value	Mkt/Bk. value																							
				High	Low										High	Low																													
<b>BROKERS</b>																																													
Alexander & Alexander Svcs	NYSE	24.75	-4.8	-6.6	32.00	22.38	369	1.00	4.0	21.9	2.98	8.31																																	
Baldwin & Lyons Inc.	OTC	18.00	0.0	-18.2	27.00	17.25	0	0.20	1.1	7.2	16.40	1.10																																	
Corroon & Black Corp.	NYSE	31.13	0.4	-4.6	37.25	26.63	133	0.84	2.7	14.5	6.31	4.93																																	
Gallagher Arthur J. & Co.	OTC	20.50	-3.5	-21.9	31.00	19.00	42	0.40	2.0	15.4	4.81	4.26																																	
Hall Frank B. & Co.	NYSE	9.50	-5.0	-34.5	19.00	8.75	235	0.00	0.0	15.4	0.00	N/A																																	
Marsh & McLennan Cos. Inc.	NYSE	64.75	0.6	6.6	72.00	56.00	688	2.40	3.7	16.8	5.14	12.60																																	
Poe & Assoc Inc.	OTC	10.00	0.0	-16.7	13.25	10.00	0	0.00	0.0	16.8	0.00	N/A																																	
BROKERS AVERAGE																								-1.8	-13.7						1.9	15.1													
<b>CONGLOMERATES &amp; HOLDING COMPANIES</b>																																													
Berkley W.R. Corp.	OTC	26.75	2.9	1.9	37.00	24.25	374	0.28	1.0	7.6	13.72	1.95																																	
Berkshire Hathaway Inc.	OTC	3800.00	-2.6	34.8	-3992.00	2510.00	80	0.00	0.0	26.1	62.53	3.95																																	
CIGNA Corp.	NYSE	64.00	1.8	16.4	69.50	55.00	1039	2.80	4.4	8.2	42.01	1.52																																	
CNA Fin'l Corp.	NYSE	57.75	3.1	7.4	64.38	47.25	239	0.00	0.0	11.7	42.71	1.35																																	
General Re Corp.	NYSE	58.50	3.5	5.4	66.88	47.63	1303	1.00	1.7	15.7	23.47	2.49																																	
ITT (Hartford Group)	NYSE	61.50	2.1	15.2	66.38	50.00	2258	1.00	1.6	13.6	44.08	1.40																																	
Sears Roebuck & Co. (Allstate)	NYSE	51.00	-2.4	28.3	59.50	39.88	3117	2.00	3.9	12.4	32.94	1.55																																	
Transamerica Corp.	NYSE	41.50	-2.9	27.2	51.38	31.50	982	1.84	4.4	8.4	26.94	1.54																																	
CONGLOMERATES AVERAGE																								0.7	17.1						2.1	12.9													
<b>INSURERS</b>																																													
Aetna Life & Cas Co.	NYSE	59.63	0.8	5.3	68.13	55.75	2003	2.76	4.6	8.4	44.75	1.33																																	
American General Corp.	NYSE	37.75	-0.3	2.4	44.75	34.88	1021	1.25	3.3	10.1	27.13	1.39																																	
Amer Heritage Life Inv't	NYSE	29.00	-1.7	13.0	34.00	25.75	3	0.96	3.3	14.3	20.37	1.42																																	
Amer Indty Fin'l Corp.	OTC	13.50	-1.8	-25.0	19.00	12.75	1	0.56	4.1	14.3	20.40	0.66																																	
American Int'l Group Inc.	NYSE	79.38	0.5	29.9	83.75	60.00	1293	0.30	0.4	15.8	29.02	2.74																																	
Aneco Reins Ltd.	OTC	3.50	7.7	64.3	4.38	2.13	23	0.00	0.0	15.8	1.33	1.81																																	
AON Corp.	NYSE	28.13	1.8	6.6	29.88	23.25	170	1.20	4.3	9.8	15.23	1.85																																	
Argonaut Group	OTC	44.25	-2.2	110.7	52.13	21.00	146	0.00	0.0	13.6	14.60	3.03																																	
AVEMCO Corp.	NYSE	23.00	0.5	-12.4	25.25	13.25	80	0.28	1.2	14.5	6.94	3.31																																	
Business Mens Assurn Co.	OTC	43.25	-0.9	67.1	48.25	25.25	346	1.10	2.5	14.5	22.15	1.95																																	
Chubb Corp.	NYSE	64.63	2.4	9.1	73.50	53.75	293	1.88	2.9	9.1	39.52	1.64																																	
Continental Corp.	NYSE	45.13	0.3	0.8	54.88	40.38	1185	2.60	5.8	9.0	41.62	1.08																																	
Durham Corp.	OTC	27.50	-6.0	-0.6	34.00	27.38	40	0.92	3.3	18.0	26.15	1.05																																	
Farmers Group Inc.	OTC	46.75	5.6	20.6	51.00	38.75	944	1.20	2.6	14.2	19.95	2.34																																	
Fireman's Fund Corp.	NYSE	35.63	-0.3	1.4	42.75	33.50	387	0.40	1.1	14.2	23.55	1.51																																	
Freemont Gen Corp.	OTC	18.88	0.8	-1.5	20.50	14.75	87	0.60	3.8	14.2	16.75	0.95																																	
Home Group Inc.	NYSE	15.00	0.7	-14.3	24.88	17.50	277	0.20	1.1	3.9	16.30	1.10																																	
Hanover Ins Co.	OTC	34.50	-2.1	8.7	37.25	29.50	47	0.36	1.0	7.9	20.91	1.65																																	
Hartford Steam Boiler	OTC	27.75	-6.7	17.7	36.63	23.50	130	1.00	3.6	11.5	10.17	2.73																																	
Kansas City Life	OTC	30.75	3.4	19.4	31.00	25.75	0	0.00	0.0	11.5	0.00	N/A																																	
Kemper Corp.	OTC	32.00	1.6	28.0	38.75	25.00	528	0.60	1.9	10.2	23.48	1.36																																	
Liberty Corp. S.C.	NYSE	49.50	5.9	34.7	50.75	36.50	40	0.80	1.6	19.2	19.96	2.48																																	
Lincoln Nat'l Corp.	NYSE	52.88	2.9	14.0	60.50	44.38	352	2.16	4.1	10.6	44.85	1.18																																	
NAC Re Corp.	OTC	25.00	1.0	-4.8	32.25	22.50	5	0.00	0.0	32.1	18.12	1.38																																	
Nobel Ins Ltd.	OTC	13.00	0.0	-20.0	18.50	10.75	38	0.00	0.0	32.1	0.00	N/A																																	
Northwestern Nat'l Life	OTC	28.13	1.4	-9.3	32.38	24.00	61	0.96	3.4	7.9	33.26	0.85																																	
Ohio Cas Corp.	OTC	43.25	0.6	12.0	49.25	38.50	102	1.68	3.9	10.6	26.80	1.61																																	
Old Rep Int'l Corp.	OTC	29.00	-0.9	5.9	33.63	23.63	190	0.74	2.6	9.7	19.80	1.46																																	
Orion Cap Corp.	NYSE	21.75	1.7	-19.8	31.00	20.00	29	0.76	3.5	9.7	9.39	2.32																																	
Protective Corp.	OTC	16.50	1.5	-8.3	21.25	12.38	82	0.70	4.2	14.2	16.51	1.00																																	
Provident Life & Acc Ins Co.	OTC																																												

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