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ANDERSON OPTIMISM INDEX IS UP

Gracing FIASCO's September front page is an interview of our own James C. H. Anderson, conducted in London last summer by this newsletter's London Correspondent, Gary Chamberlin. Here are excerpts, edited into Q. & A. format.

FIASCO (recalling Mr. Anderson's past papers to the Pacific Insurance Conference that presented forecasts for the industry's future in the U.S.A. that "do not make cozy reading for the armchair actuary who is content with the status quo"): Have recent events supported your thesis that drastic changes are necessary if the U.S. industry is to enjoy a fruitful survival into the next century?

JCHA: Yes, I still feel that way, but I have become mildly optimistic in the last year or two. We've had some big changes which affect each of the basic problems that have concerned me and others—taxation, expense, replacements, and inflation. The tax equation is still up in the air, but is unlikely to get as bad as in pre-1982. The industry has responded with new products and new approaches to distribution which I think in the end will mitigate its expense problems.

FIASCO: How does the replacement threat stand these days?

JCHA (citing a study of 100 companies' experience that showed a 50% increase in voluntary lapse rates between 1980 and 1982): Replacement activity is afoot. The biggest aspect is not surrender activity, but probably is policy loan activity.

FIASCO: Would you please comment on the profit-testing method you introduced in your 1959 Society paper, "Gross Premium Calculations and Profit Measurement for Nonparticipating Insurance" (TSA XI, 357). That was not just a clever technique, but a radical new departure in our way of thinking about life business.

JCHA: At the time I was working on this, there was a rapid rise in U.S. investor interest in the life insurance industry. Consequently, I tended to look at products from the viewpoint of a potential investor in the business, and that led to pricing on a basis of return on capital. . . . Yes, the method also casts doubt on one of the theorems you will find in a lot of actuarial textbooks, that the reserve basis has no ultimate effect on profitability. If one considers timing, it has perhaps the greatest effect of all.

FIASCO: The way we train actuaries in the U.K. is dominated by the principle of caution in every aspect of the work; some might agree that a slightly more adventurous approach would be desirable. Is caution also the keynote of your training programs in the U.S.A.?

JCHA: I think there is the same bias towards caution on both sides of the Atlantic, and I don't see anything wrong with that. An actuary still has as his primary responsibility what is essentially a fiduciary role. There have been a couple of instances in our country where this responsibility has been shirked, with unhappy consequences. I still think caution should be the basis, or bias, in actuarial training. At the same time, I think one can be entrepreneurial without abandoning conservative principles as related to issues like solvency, for example.

E.J.M.

"IT'S THE LAW"

A column by William D. Hager, Des Moines, Iowa, an attorney now in private practice

Three 1983 U.S. Supreme Court pension-and-welfare-related opinions, viz. (a) *Shaw*, (b) *Construction Laborers*, and (c) *Morrison-Knudsen*, merit at least passing attention by actuaries even though their impact upon the actuary's work may vary from slight to significant.

Shaw v. *Delta Air Lines* (no. 81-1578) considered the relationship between New York's Human Rights Law (HRL), its Disability Benefits Law (DBL) and ERISA. New York's HRL forbids any employee benefit plan which treats pregnancy differently from other occupational disabilities. In addition New York's DBL requires employers to provide the same benefits for pregnancy as for any other disability. Both the HRL and DBL "relate to" employee benefit plans, and §514(a) of ERISA pre-empts state laws which "relate to" ERISA regulated plans. However, §514(d) of ERISA provides that §514(a) shall not "be construed to . . . supersede any law of the U.S." and thus permits any state law that is necessary to enforce (among others) Title VII of the 1964 Civil Rights Act. Given these provisions, the Supreme Court held that: (1) New York's HRL can apply to an ERISA-regulated plan, except to the extent that it requires employers to adhere to provisions more extensive than those required by Title VII; (2) ERISA does not pre-empt the DBL, to the extent that it requires employers to maintain separate disability plans providing benefits required by the DBL. To gain this exemption, however, such "DBL compliance plans" must be set up as separate plans, not merely as "portions" of multi-benefit plans.

In *Franchise Tax Board* v. *Construction Laborers Vacation Trust for Southern California* (no. 82-695), the State of California brought suit to collect unpaid state income taxes levied against funds held in trust for taxpayers under an ERISA-covered vacation benefit plan. At issue was whether the state levy was pre-empted by §514(a) of ERISA (again, pre-empting any state law "relating to" such plans).

Without deciding the central issue, the Court remanded the case, determining that the federal court did not have jurisdiction as the case was then constituted. As a result, we may have to wait several more years for a definitive answer to the underlying question of the extent to which non-federal tax collection systems may levy against funds held on behalf of taxpayers by trusts formed in connection with ERISA plans.

In *Morrison-Knudsen Construction Company* v. *Director, Office of Workers Compensation Programs*, the widow of an employee killed in a construction accident raised a question as to the definition of "wages" under the Longshoremen's and Harbor Workers Compensation Act. Under the Act, the widow was entitled to ⅔ of the deceased employee's "average weekly wage" in death benefit.

The spouse claimed that this wage included not only the deceased's pay, but also the 68¢ per hour in contributions the employer was required to make to the union trust fund (for health and welfare benefits) under the terms of the related collective bargaining agreement.

The Supreme Court held that the employer contributions to the union trust fund are not included under the term "wages" under the act, and thus were not required to be factored into the formula for determining the death benefit. According to the Court, the legislative history of the Act shows Congress did not encompass such contributions within the term "wages". □