Some observers of the construction insurance market believe it will improve in 1987, citing the possibility that this market finally has stabilized with a return, or at least an imminent return, of competition among insurers. This observer would give only a very qualified approval to that consensus. There may be some coverages and limits which are easier to obtain than previously, but these are not the mainstream insurance lines. Pricing is still on the upswing and will continue to escalate through most 1987 renewals. Underwriting will continue to be tortuous and penetrating as insurers carefully attempt to assess construction activities in order to pick only the better risks. With respect to a return to insurer competitiveness, this may be based more on wishful thinking than on solid evidence. It is true that some insurers are indicating an interest in broader participation in the construction insurance market but, to date, actions do not support their announced intentions. More predictions later.

General Liability . . .

The new CGL (Commercial General Liability) policy, on a claims-made basis, will begin to have considerable influence on the market in 1987. The claims-made feature provides that a contractor’s current liability contract applies to claims made or reported during its policy period, as opposed to the application of the occurrence form in effect when the loss occurred. The claims-made form was thought to be the saving grace for liability insurers battered by “deep pocket,” long-tail losses. There has been less than overwhelming enthusiasm for the claims-made form and more than moderate resistance to it, especially by risk managers. As a result, some insurers have pursued the claims-made form less avidly than others. Occurrence forms are still being sought and are available for better risks. It is still an open proposition as to whether the claims-made form will sweep the market in the near future. Certainly, it will not happen in 1987. Should insurer results improve, with prospects of continued improvement, it is even less likely it will happen. Obviously, certain risks have characteristics that make the occurrence form far more desirable. Unfortunately, some of these characteristics also bring about the dreaded “tail” losses which were instrumental in producing the claims-made form. However, risk managers have not necessarily embraced claims-made on the basis that it is inevitable. It seems as if risk managers, insurance buyers and others have quite rightly assessed the new CGL on a claims-made basis as a complex document requiring more sophisticated analysis and use in particular exposure situations.
“We’re still in a seller’s market, which means we may have to sell the insurer on meeting our insurance requirements at reasonable prices.”

than the older CGL (Comprehensive General Liability) policy. For smaller construction firms with less sophisticated risk management advice available to them, the new CGL’s retroactive date, laser beam endorsement, and “tail” coverages are somewhat inhibiting. For any size construction organization, the use of the new CGL should be undertaken carefully. It can be troublesome.

As indicated above, difficult construction risks will continue to be hard to place in the liability insurance market. Contractors using toxic materials, having possible pollution exposures, engaged in design and build construction or construction management and similar risks will not find much joy in the 1987 construction insurance market. Availability of adequate limits for many contractors during 1987 and probably 1988 will continue to be restricted. The most impacted area seems to be the middle layers of the basic or excess liability coverage limits, causing them to be the most difficult to fill. Liability self-retentions or large deductibles for the larger construction risks make for interesting discussions with underwriters, but they are not without their problems. Certain risks, usually the smaller to medium-sized construction firm, will not obtain lower and lower premiums as the firm’s self-retention or deductible increases. In some cases, underwriters have a predetermined amount of premium income they believe is desirable for the risk to develop and they will not venture below this figure, regardless of the contractor’s willingness to retain more of the risk. Moreover, as the contractor’s retention increases, certain conditions may be imposed with respect to the retention. The insurer may want to participate in the conduct or direction of any defense of a lawsuit, even though it appears as if the lawsuit is easily one whose verdict will not exceed the retention. Presumably, the insurer fears that it just might penetrate into the coverage provided by the insurer. In some professional liability coverages, the insurer may require that when a lawsuit occurs which appears likely to exhaust the retention, the amount of the retention must be deposited immediately with the insurer for its use in mounting a defense against the lawsuit. Some of these
provisions often can be softened by negotiation.

The umbrella market for contractors and for almost all insureds is restricted. Umbrella insurers have increased rates on what was previously grossly underpriced excess coverage. Limits are shadows of what previously was available and at costs which, in most cases, are prohibitive and discouraging. Umbrella insurers are not only underwriting the contracting risk but also are “underwriting” the contractor’s primary liability insurer. If the umbrella insurer believes the primary insurer is financially shaky, has been known to have less than adequate claims handling, or is using a primary liability insurance form which the umbrella insurer dislikes, the umbrella you would like to have and umbrella insurance provisions you have always had may not be available.

Despite this rather pessimistic outlook for 1987, the liability insurance market eventually will turn, but as I indicated above, not before the end of 1987. One of the brighter signals in this area is that the reinsurance market has begun to recover from its previous bout of insanity and is showing signs of offering more capacity to primary insurers, which will aid in their eventual return to the marketplace.

Bonding . . .

Surety bonding always has been the “banking or credit lending” aspect of the insurance business. Losses of any substantial amount were shocking to a surety underwriter, something on the order of a banker’s dismay over a horrible loan portfolio. This has not been true for the past several years. The surety loss experience has tracked that of some of the other insurance lines. This, as expected, has substantially reduced bonding availability. This unique situation has been much exacerbated by contractors’ problems of high expenses, low margins, and overextension as to jobs capacity. Couple this sad scene with the surety’s concern over a new impact on a contractor’s finances, that of inadequate or no property casualty insurance coverages. Heretofore, such contractor coverages and their adequacy was only of passing concern to the surety. Now, it is of keen interest to them, because inadequate liability limits can bankrupt a contractor as easily as seriously underestimating a job. Moreover, high (too high) premiums for liability insurance boosts the contractor’s expense ratio, compounding an already serious contractor financial problem. Most observers believe, and I concur, that the bonding market probably will trail any liability insurance market recovery. As indicated, stable property casualty insurance markets with reasonably-priced available, adequate limits are needed to coax the surety underwriters out of their fit of depression. Mark 1988 as the earliest for any reasonable return to an adequate surety market. Possibly, it will not occur until 1989.

Workers’ Compensation . . .

Not as volatile as the liability insurance market, contractor workers’
compensation costs have continued to increase and are likely to do so in the near term. The various state statutes and the bodies interpreting them continue to extend benefits to those previously not covered. There is no indication this will abate. Some of the prior players in this market are gone or have severely restricted their offerings. Some of the retrospective and dividend plans previously available are difficult to come by, especially for smaller contractors. As a prediction, this market will start to return to normalcy toward the end of 1987, and it should be in reasonably good condition by early to mid-1988.

Renewal Strategies . . .

We are still in a seller’s market, which means we may have to “sell” the insurer on meeting our insurance requirements at reasonable prices. Try the following:

1. Start early. If your insurance program renews in 1987, start now working with your insurance representative to present it for renewal, accompanied by complete supporting data.

2. Watch your bids. Anticipate that your insurance costs will be higher in 1987. Face it, they will be higher for your competitors, so do not undercut your costs by assuming insurance costs will increase only modestly.

3. Crank up your loss control and safety efforts. Cut your losses by preventing or reducing them. Underwriters are human (or so it is reported), and they are susceptible to risks that attempt to control losses.

4. Be prepared to accept lower limits, especially in liability coverages. You may have to accept lower limits because of less availability, or you may decide to reduce the limits somewhat in order to reduce what could be escalating insurance costs.

5. Accept greater retentions. Review your net worth to determine whether you can accept the financial impact of larger deductibles. Do not accept larger deductibles unless you obtain corresponding insurance rate reductions for doing so.

A Prediction to End All Predictions . . .

Barring wars, famine, pestilence, rampant inflation, a “give-away” philosophy in the federal and state legislatures, a run-away civil justice system, or sundry other calamities, I suggest 1990 as not only the beginning of a new decade, but also the beginning of a more stable and manageable insurance business. Contractor resistance to over-pricing, a good healthy dose of insurer competition resulting in adequate capacity—even over-insurance capacity — and, hopefully, an expanding economy, will enable us to regain some measure of equanimity and reasonableness in construction insurance.