

THE RHA REVIEW

ROUTE TO:

Vol. 1, No. 1, Fourth Quarter 1994

A publication of Robert Hughes Associates, Inc., an international insurance consulting, actuarial, litigation support and risk management company.

Dear Friend:

Welcome to the first issue of *The RHA Review*, a publication aimed at providing you, the friends of Robert Hughes Associates, Inc., with news and information that is important to you and your business. Our goal is to provide a reliable, regular and informative source that will enable you to better understand the insurance, actuarial and risk management business from many positions and perspectives.

Over the next year we hope to bring you information pertaining to, but not limited to, insurance litigation, risk management, actuarial studies, captive formation, insurance program design, insurance company management, Lloyd's and the London market.

Our format will be to include several regular features, one of which is "From Near and Far," a column featuring news snippets from home and abroad. We also hope to bring you the serialized history of Lloyd's of London, which will later be available in its entirety from our Dallas office.

The RHA Review will be published quarterly and mailed to you free of charge. Our intended publication dates are the last Friday of November, February, May, and August of each year. If you or any of your colleagues would like to add someone to our mailing list or would like to offer a comment or suggestion, please call or write to us at our Dallas office.

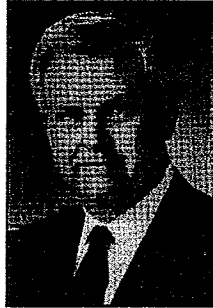
Thank you in advance for your input and support.

Sincerely,

John Oakley
Editor

WILL THE PARACHUTE OPEN?

AVOIDING "COVERAGE NULLIFICATION THROUGH LITIGATION"



By Robert N. Hughes, CPCU, ARM

I recently heard Pat Summerall, of CBS and Fox Sports fame, describe alcoholism as "the only disease of which the victim doesn't want to be cured." To a certain extent, something similar can be said about insurance. Insurance is one of the few services or commodities that you purchase but hope never to use. Most individuals never do use the stuff. Most companies don't use their liability coverage often, either, but when they do it is often years after the policies have expired.

I was taught by an economics professor at Southern Methodist University (who must have been a genius since I actually remember it) that the true value of a commodity or service could only be determined when it was put to use. The example he used was a parachute. You can feel very secure having the thing strapped to your back, but the only way to tell if it is worth a darn is to jump out of the plane and pull the rip cord.

Many of the consultants at RHA, Inc., and RHA, U.K., Ltd., myself included, are spending a great deal of their time serving as expert witnesses in insurance coverage cases. One of the most amazing aspects of the phenomenon is the

effect that the insurance companies' affirmative defenses would have, if successful, on coverage that was negotiated and paid for years ago...in some cases, decades. This begs the question, "How do you know what coverage you really have?" or, "Is that parachute really going to open?"

Since this is the "maiden" issue of our newsletter, I wanted to be sure that my first contribution was on a subject which I consider to be of most dra-

"Insurance is one of the few services or commodities that you purchase but hope never to use."

matic importance to our friends and clients. This issue of "disappearing coverage" (or as a lawyer friend in New York puts it, "nullification through litigation") involves, for certain, billions of dollars and possibly even trillions. Last August, A. M. Best announced in one of its publications that the total ultimate incurred

(PARACHUTE, continued inside)

IN THIS ISSUE:

- Welcome to *The RHA Review*
- Avoiding coverage nullification
- RHA's 15th Anniversary

(**PARACHUTE**, cont'd from cover)

value of the environmental and asbestos claims now being litigated in the U.S. is \$2,000,000,000,000. Yes, that's two trillion bucks. Furthermore, it is estimated that the discounted present value of that figure is 72 percent of the entire insurance industry's capital and surplus.¹ If you add to that the billions of dollars of premises, operations, products and completed operations claims that are currently outstanding, the mind boggles.

Who's going to pay? Will it be the world of commerce and industry, or will it be the insurance industry? The jury is still out, so to speak, and it will take years to know the final answer. In the meantime, however, there are lessons to be learned and precautions to be taken to eliminate, or at least reduce, the chances that, in the future, your own coverage will be decimated or nullified when the insurance company says, "You don't have any coverage and if you don't agree, just sue us." (That presumes the company hasn't already sued you to void the coverage.)

Where to start is the problem. I think the best place to start is to try to buy

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your insurance from companies that pay their claims and avoid those that don't. Sounds simple, doesn't it? Not so...the process is complicated — first, by confusion over real value versus cost (remember our parachute) and

second, by a lack of easily accessible data. To illustrate the first point I will use an actual example. (No names, of course, to protect the guilty.) There is a prominent insurance organization that has a reputation for providing coverage in circumstances and at prices that cannot be duplicated by their competition. So, great! You save \$20,000 per year on your \$5,000,000 excess of \$10,000,000 umbrella layer. The fact is, however, you won't even know for years whether you have any claims that will penetrate this layer. The other fact is




that this company to which I refer simply doesn't pay large commercial liability claims without a long, protracted legal battle with its policyholders. I was recently retained in a case in which a major U.S. corporation was litigating a \$10 million umbrella layer. Finally, it settled for \$5 million. When the smoke cleared it was revealed that, between the two sides, \$27 million had been expended in legal costs. I don't care how cheaply the policyholder bought that \$10 million layer — it not only wasn't worth anything at all, but it cost them more than \$10 million in legal fees to prove it. Crazy!!!

As far as the second problem is concerned, all I can say is, "We're working on it." We have so far been somewhat successful in analyzing certain aspects of Schedule P in insurance company annual statements

***"Who's going to pay?
Will it be the world of
commerce and industry,
or will it be the insurance
industry?"***

to determine whether they pay their claims. Probably the most dependable source for information in this regard, however, is "the street." Brokers and agents know who is paying their claims and who isn't....they just don't want to get into it unless you ask them. Lawyers specializing in insurance litigation also know who's saying "sue us," so you might ask them. (Actually, if you should decide to tell your agent/broker that you want a policy that costs more, he or she might suffer a heart attack, so be careful.)

Seriously, however, it is imperative that all policyholders concern themselves with real value, particularly in the liability area. If you fail to do so, you might find that instead of a parachute in that sack on your back, it was really only someone's lunch. And guess what — when you hit the ground you won't need a sandwich.

The editor says I'm out of space for this edition so I'll have to go. In future editions I'll talk about such things as "Notice of Loss," "Definition of Occurrence," "Occurrence vs Claims Made Coverage," "Lost Policies," etc. Stay tuned. 

¹BestWeek, March 28, 1994, ©1994, A.M. Best Company, Inc.

FROM NEAR AND FAR



The sinking of the passenger/cargo ferry *Estonia* in the Baltic Sea and the ensuing loss of more than 900 lives was the biggest maritime disaster in European history. Insurance claims are expected to exceed \$100 million.



Lloyd's of London has issued guidelines for corporate capital participation in 1995. This is the first time that corporate investors have been permitted to have a stake in Lloyd's.



Worldwide insurance premiums had reached \$1.4 trillion by the end of 1992, according to figures in a just-released report by Swiss Re, Zurich. The report said that the United States has a 43.86% share of the market. Japan is second with a 12% piece of the pie.



In India the government looks set to lift restrictions on competition in the insurance industry. Until now all insurance companies have been government-owned. New legislation is expected to open up the industry to private entities and foreign competition.



An early estimate of damage to insured properties from recent flooding in Southeast Texas is \$175,000,000. More than 46,000 claims are expected.



HOLIDAY GREETINGS WITH
VERY BEST WISHES
FOR YOUR HAPPINESS
IN THE NEW YEAR



The staff of Robert Hughes Associates, Inc.

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BLOWING OUR HORN


While we were studying the "correct" way of putting together a newsletter, one of the things that we ran into over and over again was, "Don't blow your own horn too much."

Well, as this is our first issue, we are going to blow it loud and clear. This year Robert Hughes Associates, Inc., is celebrating its 15th anniversary. Because of this significant landmark for the company, we are going to share a brief history with you.

In 1979 Bob Hughes decided to form an insurance consulting company based upon the ideal of providing independent and unbiased counsel to insureds and self-insureds. The responsive, innovative and professional way in which the company has held on to its ideals has propelled it to the forefront of the insurance consulting field.

Today, in 1994, the firm has a far-reaching international reputation in insurance management, actuarial consulting and risk management, as well as in its primary source of business — insurance consulting. In addition to RHA's traditional business, the firm's consultants are also becoming heavily involved as expert witnesses in insurance litigation cases.

Throughout the highs and lows that come with running a business, RHA has always maintained its reputation and credibility. It is this consistency that has enabled the firm to expand its services and open offices in Houston and, more recently, in England.

So it is with great pleasure and pride that we announce to you our 15th anniversary. We hope that we can stick around for at least another 15 years and continue to provide you, our friends, with the type of services that we know can make a difference to you and your company. 

THE RHA REVIEW

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The RHA Review is published quarterly by Robert Hughes Associates, Inc., an independent international insurance, consulting, actuarial, litigation support and risk management company based in Dallas, Texas with offices in Houston, Texas and London, England and the purpose of the publication is to offer insurance-related information and critical comment pertinent to the clients, friends and family professionals of Robert Hughes Associates, Inc. The publication is available free to our clients, but the information contained herein is intended to be general in nature and should obtain professional counsel before acting on any portion of the basis of this material.

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