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REINSURANCE: A SECRETIVE FOREIGN INDUSTRY THAT CAN DO GREAT HARM TO THE UNITED STATES

The U.S. economy is dependent on the property/casualty insurance industry, which is partly controlled by foreign reinsurance companies that are accountable to no federal or state agency and subject to virtually no U.S. regulatory laws.

- The property/casualty insurance industry is one of the most powerful and critically important industries in the United States. Without insurance, small businesses would collapse, everyday Americans might not receive health care and many daily activities taken for granted each day would be impossible.

- Reinsurance is insurance for insurance companies. The insurer pays the reinsurer a premium, in exchange for which the reinsurer agrees to share the risk with the insurer. A U.S. insurer's willingness to offer coverage is often determined by the availability of reinsurance. Thus, reinsurers have a substantial amount of economic power over primary insurers.

- The top five global reinsurance companies are foreign companies.[1]

There is no meaningful scrutiny or regulatory control over reinsurance companies in the United States by either the federal government or state governments.

- Congress delegated authority to regulate insurance to the states but provided them with no regulatory or licensing standards and imposed no ongoing congressional oversight.

- States do not require foreign reinsurers to be licensed to do business in the United States. They require only that the foreign reinsurer maintain some security in the United States to back up its obligations, such as a U.S. trust fund or a letter of credit.

- States generally have not regulated surplus lines,[2] excess lines[3] or reinsurance contracts[4] even though foreign reinsurers might write all of these lines in every U.S. jurisdiction. State reinsurance regulation is focused on assuring the solvency of the reinsurer.

- States generally have no data collection requirements for any insurer let alone foreign reinsurers. Therefore, these companies can easily mislead lawmakers, regulators, the media and the public with exaggerated claims or demands, with little scrutiny.

In the mid-1980s, the reinsurance industry, led at the time by Lloyd's of London, helped cause a severe and damaging liability insurance crisis in the United States.[5]

- In the mid-1980s, insurance companies began to sharply raise premiums as well as reduce or cancel coverage for doctors, manufacturers, municipalities, day-care centers, non-profit groups and many other commercial customers, creating a liability insurance crisis in America.

- Foreign reinsurers, led by Lloyd's of London, deliberately helped precipitate this damaging crisis for U.S. businesses.

    - Lloyd's became the locus of meetings and discussions for a coordinated reinsurance industry effort to raise commercial insurance rates, abandon certain lines of coverage, change the standard terms of coverage used by the majority of the industry and obtain anti-victim changes in the U.S. liability laws (so-called "tort reform"). They demanded progress in all areas along with deceptive warnings that without such progress they would withdraw from the U.S. market.

- The reinsurance industry also went state to state, with various types of demands, threats and intimidation.

    - In Alaska in 1985, Lloyd's counsel told state legislators, "If you change your tort laws in Alaska, you will have a market here when the rest of the United States will not. Lloyd's is pulling out of the United States as a reinsurer – they have already pulled out of Connecticut, New York and New Jersey – and they're continuing to pull out of more States." Alaska's Director of Insurance John George then told Alaska's Defense Council, "Lloyd's is threatening to pull out of the United States, in fact they are pulling out of states one by one, but they will stay in Alaska if we enact tort reform. If we all work together we might be able to steam roller this legislation." In fact, Lloyd's never left the United States, Connecticut, New York or New Jersey. But in 1986, Alaska lawmakers reacted to those misleading scare tactics by enacting drastic changes in the state's liability system, restricting victims' rights.

        - Later, when asked about Lloyd's threatened abandonment of the U.S. market, the company's former Chairman denied Lloyd's had ever "turned its back" on its incredibly profitable U.S. business. Rather than complaining about the U.S. liability system, he said, "It's a good time to enter the business, but with the benefit of hindsight, two years ago would have been even better."

    - In 1985 testimony before the Maryland Governor's Task Force on Maryland Mutual Society's request for a 70 percent rate increase for OB/GYNs (when a 10 percent reduction was justified), the company's president testified, "In order to keep [reinsurers'] participation on cover we had to accede to some strong suggestions from the reinsurers to beef up the rate charged to the OB's…." Maryland then passed a bill to limit collateral source payments in medical malpractice cases. According to Maryland Delegate Lawrence Wiser, in early August 1987, John Spinella, then of Medical Mutual, was asked why there was little rate reduction as a result of the new collateral source law. Spinella replied that there would not be much rate impact because Medical Mutual still had to pay the same premiums to their London reinsurers.

- In April 1987, the Mutual Insurance Company of Arizona (MICA) announced medical malpractice rate increases averaging 36 percent across the board, with some as high as 50 percent, despite a whopping $38 million surplus. Six months later, during a subcommittee hearing of the Governor's Committee on Medical Malpractice Insurance in Arizona, Woody Beckman, MICA's actuary, implicated the reinsurance industry as responsible for both the high surplus and the premium increases.

- During a December 12, 1987, state regulatory hearing over a rate request for COPIC, Colorado's physician-run medical mutual insurance company, COPIC's reinsurer – which was pushing for COPIC's rate hike on doctors – was asked, "[I]s it safe to say that you've got a substantial amount of influence over our insurers' rate decisions?" He responded, "To the extent that reinsurance is a significant part of their total picture, yes, absolutely."

If threatened by the reinsurance industry today, states should demand certain key reforms, particularly laws to require reinsurers to disclose information.

- With rare exceptions, state laws today do not force even licensed property/casualty insurance companies to disclose meaningful information to U.S. authorities. For example, state reporting laws typically allow insurance companies to hide information about premium income and payouts for specific sublines of insurance, and how victims actually fare – in other words, how much insurers actually pay in settlements, or verdicts that are reduced post-trial, compared to victims' injuries and losses.

- Yet even weak state disclosure laws do not apply to reinsurers, which submit little or no financial information to state authorities, including fundamental facts such as how much in premiums it collects per line of insurance or its incurred losses.

Unless lawmakers take responsible, remedial steps to control reinsurance abuses, the United States will never be able to deal systematically with the threatening tactics of the reinsurance industry. Our nation and economy will be continually subject to the damaging control of foreign reinsurers over U.S. insurers and consumers.

NOTES

[1] They are: Munich Re (German), Swiss Re (Switzerland), Hanover Re (Germany), Canada Life Re (Canada) and SCOR (France). Only two U.S. companies are in the top 10: Berkshire Hathaway and Reinsurance Group of America. Lloyd's of London ranks seventh. China Re ranks eighth. Mark Rosanes, "Revealed – the world's 50 largest reinsurance companies," *Insurance Business America*, August 26, 2022, https://www.insurancebusinessmag.com/us/news/breaking-news/revealed--the-worlds-50-largest-reinsurance-companies-418331.aspx

[2] Surplus line means any risk or part thereof for which insurance is not available through a company licensed in the applicant's state (an "admitted" insurer). The business is therefore placed with "non-admitted" insurers in accordance with surplus or excess lines provisions of state insurance laws.

[3] "Excess" or "umbrella" coverage is what businesses or municipalities often purchase for losses that might exceed the policy limits of their primary coverage, or if they self-insure, to cover large losses.

[4] For example, Connecticut's law reads, "No provision of law relative to the form of insurance contracts or policies shall apply to contracts of reinsurance unless made specifically applicable thereto...." Conn. Gen. Stat. § 38a-289 (2015).

[5] Information and back up for this section can be found in Joanne Doroshow and Adrian J. Wilkes, *Goliath: Lloyd's of London in the United States,* Center for Study of Responsive Law (1988). Available upon request.