

## Reinsurance of the 1930's revisited

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Résumé de l'article

Notre fidèle collaborateur, M. Eric A. Pearce, n'a pas voulu laisser passer le cinquantenaire de la Revue sans nous donner un nouveau texte. Cette fois, il fait la comparaison entre deux polices de réassurance ayant trait à la responsabilité civile; l'une est celle de la World Auxiliary Corporation et l'autre, le texte dont on fait actuellement usage. S'il y a des différences entre les deux, à un peu plus d'un demi-siècle de distance, il est étonnant de voir comme la pratique a peu changé. Comme le dit M. Pearce, on avait trouvé dès le début une solution favorable dont on n'a guère voulu s'écarter, suivant la meilleure tradition britannique.

## Reinsurance of the 1930's revisited

by

ERIC A. PEARCE, F.C.I.I.

92 *Notre fidèle collaborateur, M. Eric A. Pearce, n'a pas voulu laisser passer le cinquantenaire de la Revue sans nous donner un nouveau texte. Cette fois, il fait la comparaison entre deux polices de réassurance ayant trait à la responsabilité civile; l'une est celle de la World Auxiliary Corporation et l'autre, le texte dont on fait actuellement usage. S'il y a des différences entre les deux, à un peu plus d'un demi-siècle de distance, il est étonnant de voir comme la pratique a peu changé. Comme le dit M. Pearce, on avait trouvé dès le début une solution favorable dont on n'a guère voulu s'écarter, suivant la meilleure tradition britannique. A.*



When Mr. Gérard Parizeau invited me to write a paper for the fiftieth anniversary number of *Assurances*, I was honoured to accept. As I reflected on which subject I might choose, it seemed appropriate to look back at the early beginnings of that method of reinsurance which has always most interested me, namely, excess of loss reinsurance.

It so happened that quite recently a good friend in London sent me a copy of a very early printed excess of loss reinsurance policy form. It applied to Public Liability and was one of the first, possible the first to be printed and was set up in type in the early 1930's. It was used extensively by the company which prepared it, The World Auxiliary Insurance Corporation Limited, which was, with Lloyd's one of the early pioneers of non-proportional reinsurance in the London market. The *World Aux*, as it was sometimes known, was a rather small company of good reputation, which in those days attracted some remarkable men to its underwriting team. It was swallowed up several years ago in that flood of takeovers, amalgamations, sales and purchases which changed the face of the London market.

As I was reading this early form, it seemed to me that it would be of interest to compare it with a modern printed form for non-proportional reinsurance which is applicable to-day for facultative excess Public Liability.

The most important condition in any excess of loss contract is the definition of ultimate net loss, which should define very carefully those items of expenditure relative to a loss which are to be included in or excluded from the claim formulated against the Reinsurer. Let us look at that clause first.

**World Aux:** the sum actually paid in cash in settlement of losses for which the Company is liable after making proper deduction for all recoveries salvages and other reinsurances.

**Modern form:** the amount actually paid in cash in settlement of liability of the Company after making deductions for all recoveries and for other valid and collectable reinsurances.

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One difference so far. The former requires the deduction of other reinsurances whereas the latter refers only to other valid and collectable reinsurances. This is a little surprising, for in many contracts one now finds the words "other reinsurances whether recovered or not". Indeed, it might be assumed that "valid and collectable" implies that if other reinsurance monies cannot be collected, the relative amount could be included in the ultimate net loss.

The wordings continue.

**World Aux:** shall exclude all expenses incurred in investigation, adjustment and litigation.

**Modern form:** shall exclude all expenses and Costs.

Costs are defined as interest accruing after entry of judgment, investigation, adjustment and legal expenses.

Both exclude broadly the same items.

**World Aux:** Other loss and legal expenses incurred with the consent of the Reinsurer shall be apportioned in proportion to the respective interests as finally determined.

**Modern form:** Costs incurred with the written consent of the Reinsurer shall be apportioned.

There may seem to be an anomaly here. Both say quite clearly in the preceding phrase, "shall exclude all etc." Then they include part, at least, of what has been excluded. I should imagine that over the years there have been some sharp words exchanged as to the difference between "expenses incurred in....litigation" and "other loss and legal expenses". Possibly it is controlled by the consent of the Reinsurer.

The point being made is, I think, that ultimate net loss is one thing. Other loss is something else to be dealt with separately.

In each case there is qualification of the method of apportionment of other loss and legal expenses, or Costs, as the case may be.

**World Aux.:**

(a) for a claim likely to exceed the deductible — no costs shall be incurred without the consent of the Reinsurer.

94 (b) if the claim becomes adjustable previous to going into Court for less than the deductible — no costs shall be payable by the Reinsurer.

(c) if the sum for which the claim can be adjusted exceeds the deductible — Reinsurer shall contribute to the costs in the ratio that the Reinsurer's proportion of the liability for the judgment rendered bears to the whole amount of the judgment. — interest on any claim or judgment shall be considered as a litigation cost and shall be apportioned.

**Modern form:**

(a) and (b) above are virtually the same. In (c), the Reinsurer shall contribute in the ratio that the Reinsurer's proportion of the ultimate net loss as finally adjusted bears to the whole amount of such ultimate loss. As we have seen interest is included in Costs.

As regards (c) above, one would imagine that there could be an appreciable difference in apportionment if the two different phrases were applied to a case where several claimants settled out of court, and one or more forced court action.

In both forms the Company can withdraw from any appeal, and the Reinsurer can continue the legal battle at his own cost and expense.

Both emphasise that in no event shall the total liability exceed the Reinsurer's limit of liability, although the modern form adds: plus the expenses of such appeal.

No mention is made in the *World Aux* form relative to recoveries made by the Company after a loss settlement, whereas the modern form spells out fully the principle that recoveries or payments recovered or received subsequent to a loss settlement under the reinsurance shall be applied as if recovered or received prior to such settlement. This is intriguing. I am sure that the *World Aux* never doubted this principle and the emphasis on it in the modern form leads me to believe that at some stage during these past fifty years, there has been a challenge to a Rein-

surer on the point. One would like to know that arguments were advanced on both sides.

The liability of the *World Aux* is expressed as any one accident or series of accidents arising out of one occurrence. The form goes on to explain that there is no limit to the number of accidents or occurrences for which claim may be made. The modern form opts for each and every accident, the definition of accident being an accident or series of accidents arising out of one event.

Finally there is the matter of premium. The modern form simply fixes the premium. The *World Aux* fixed the premium, of course, but qualified this by requiring that any alteration made in the premium for the underlying insurance should be advised to the Reinsurer, and the reinsurance premium adjusted pro rata. One can imagine the controversy which is likely to have arisen when the Company, having sustained a multitude of small claims, negotiated an additional premium, merely to find that a claim-free Reinsurer was entitled to a substantial share of it.

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What has so greatly interested me, is not the differences between the two forms, but their great similarity and the fact that in essentials the conditions have remained unchanged during the half-century. The men of the *World Aux* who in those days were dealing with a relatively new development in our important industry, a development which would have very far reaching effects, foresaw the technical problems so clearly that little has been changed in the printed word during this span of generations.

Were they still with us, they would be gratified that their work had stood the test of time, but would not, I believe, have been at all surprised.

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Le service de documentation Sodarcen publie périodiquement un relevé des principaux journaux et revues consacrés aux assurances. Il y aurait là, croyons-nous, une source de documentation aussi précise pour les assureurs qu'elle l'est pour nous lorsque nos collaborateurs font certaines études particulières, soit sur des sujets théoriques, soit sur des points techniques. Si le nombre d'adhérents était suffisant, nous nous ferions un plaisir de leur adresser les relevés trimestriellement, moyennant un abonnement de \$25.