Assurances

Assurances

Insurance Industry Regulatory Issues

R. E. Bethell

Volume 54, numéro 4, 1987

URI : https://id.erudit.org/iderudit/1104527ar
DOI : https://doi.org/10.7202/1104527ar

Aller au sommaire du numéro

Éditeur(s)

HEC Montréal

ISSN

0004-6027 (imprimé)
2817-3465 (numérique)

Découvrir la revue

Citer ce document

Bethell, R. (1987). Insurance Industry Regulatory Issues. *Assurances*, *54*(4), 561–567. https://doi.org/10.7202/1104527ar

Résumé de l'article

Le président du groupe *Canadian General Insurance* a présenté devant les membres de la *Canadian Insurance Accountants Association*, au début de septembre 1986, à London, Ontario, quelques idées mises au point récemment pour la constitution d'un fonds de garantie. Comme on s'en souvient, la plupart des assureurs s'étaient sinon opposés, du moins montrés très réticents à l'égard d'un projet de ce genre. C'est ainsi que le Bureau d'assurance du Canada avait conclu qu'en principe, les assureurs ne devraient pas avoir à participer aux mauvaises opérations faites par l'un ou plusieurs d'entre eux au Canada, après la déclaration de faillite. Après avoir longuement réfléchi à la question, un certain nombre d'assureurs traitant au Canada ont modifié leur attitude et ils ont pensé qu'il valait mieux imaginer un plan d'entraide, au lieu de laisser le gouvernement déterminer lui-même ce qu'il désirait. Dans son discours, M. R. E. Bethell a apporté un certain nombre de suggestions pour la constitution d'un fonds contributoire. Depuis, les choses ont pu évoluer, mais la proposition des assureurs nous a paru assez intéressante pour en montrer tout au moins un premier aspect. Voici ce que M. Bethell exprimait au congrès, en septembre dernier, à ce sujet.

Insurance Industry Regulatory Issues

by

R. E. Bethell[1]

Le président du groupe Canadian General Insurance *a présenté devant les membres de la* Canadian Insurance Accountants Association, *au début de septembre 1986, à London, Ontario, quelques idées mises au point récemment pour la constitution d'un fonds de garantie. Comme on s'en souvient, la plupart des assureurs s'étaient sinon opposés, du moins montrés très réticents à l'égard d'un projet de ce genre. C'est ainsi que le Bureau d'assurance du Canada avait conclu qu'en principe, les assureurs ne devraient pas avoir à participer aux mauvaises opérations faites par l'un ou plusieurs d'entre eux au Canada, après la déclaration de faillite. Après avoir longuement réfléchi à la question, un certain nombre d'assureurs traitant au Canada ont modifié leur attitude et ils ont pensé qu'il valait mieux imaginer un plan d'entraide, au lieu de laisser le gouvernement déterminer lui-même ce qu'il désirait. Dans son discours, M. R. E. Bethell a apporté un certain nombre de suggestions pour la constitution d'un fonds contributoire. Depuis, les choses ont pu évoluer, mais la proposition des assureurs nous a paru assez intéressante pour en montrer tout au moins un premier aspect. Voici ce que M. Bethell exprimait au congrès, en septembre dernier, à ce sujet.*

~

"It is evident that Canadian consumers were exposed to insolvencies of companies of which they could have had little foreknowledge with respect to their financial condition. Therefore, Industry leaders decided it would be appropriate to structure a plan which would protect innocent victims of a failed company. Their feeling was that the Industry itself was the best source of structuring such a Plan and that it would restore public confidence in the private insurance sector.

---

[1] Mr. Bethell is President and Chief Executive Officer of the Canadian General Insurance Group. The conference has been given to the members of the Canadian Insurance Accountants Association in London, Ontario, on September 10 to 12, 1986.

1. The proposed Compensation Plan

The Compensation Plan is designed to provide a reasonable level of recovery for claims of policyholders under most policies issued by general insurance companies.

Government owned insurers, who write only automobile insurance, would not be members of the Corporation and accordingly would not be covered nor subject to assessments.

Governement owned insurers, who write any of the policies (except for automobile policies) in respect of which the private insurers are covered, would be members and would be covered and assessed in respect of those policies.

A Government owned insurer, which writes both automobile and non-automobile policies, would be a member but would be covered and assessed only with respect to its non-automobile policies.

2. Desirability of Federal Legislation

The Compensation Plan is designed to be put in place on a province-by-province basis, although it would be administered on a nationally-coordinated basis by a single corporation. Federal involvement in the initiation of the Plan is necessary because of federal registration arrangements and because Ottawa has constitutional authority over insolvency arrangements. At a minimum, implementation of the Compensation Plan should be preceded by a revision of the provisions of the Winding-Up Act governing priorities on the liquidation of an insurance company.

The Insurance Bureau of Canada has long felt that the existing provisions that give claims for unearned premiums a priority equal to claims for indemnification against specific insured loss or damage are undesirable. The existing priority pattern would be inconsistent with the proposed Compensation Plan, since the intent is that the plan will provide compensation only for specific claims. The Plan will assume no liability for unearned premiums. The priority pattern should be amended so that the Plan will not be required to carry a disproportionate and unfair burden in an insolvency.

3. Initiation of Administering Corporation

The Compensation Plan will be administered by a not-for-profit corporation created under Part II of the Canada Corporations Act, although it would be preferable for the Corporation to be created by a Special Act of the Parliament of Canada that would also deal with a number of related matters. All participating insurance companies would be members of the Corporation. A participating insurance company would be a company licensed in a participating province. Any province could become a participating province by adopting appropriate legislation or regulations that would require all licensed general insurers to become members of the Corporation and to be bound by legal contracts concerning the operations of the Corporation, including commitments to make their appropriate contributions to assessments.

4. Operation of Administering Corporation

The Corporation would be administered by a Board of Directors elected by its members – i.e. participating insurers. It would operate in close liaison with the Federal Superintendent of Insurance and with Superintendents of Insurance of participating provinces. The Board would have the right to appoint an Advisory Committee to any specific insolvency and to delegate responsibilities to that Committee : again, the Superintendents would be entitled to designate non-voting representatives to any Advisory Committee.

5. Procedure in an insolvency

Immediately after the winding-up order is made, representatives of the Corporation would consult with the court-appointed liquidator in order to arrive at an appropriate working relationship.

It is expected that the procedures established by the liquidator to settle the quantum of policyholders' claims against the insolvent insurer will be reviewed with the Corporation in order that the Corporation will be prepared to accept and act upon the settlements reached by the liquidator's adjusters.

6. Payment of claims

The maximum recovery from the Corporation would be $200,000 in respect of all claims arising from policies issued to a single named insured by the insolvent insurer and which arise from a

single occurrence. The actual amount to which a particular insured (or third party claiming through the insured) is entitled would be determined by, first, calculating what the aggregate of his entitlement would have been under all applicable provisions of his policy or policies (e.g. deductibles, co-insurance, etc.), secondly, reducing the amount so arrived at by $500 and, thirdly, determining the lesser of that amount and $200,000.

Because all claims by a policyholder arising out of a single occurrence would be aggregated, it may be necessary for the Corporation to establish priorities as to how a particular payment is to be applied. This matter requires further study.

7. Indemnified legal costs

Many insurance policies commit the insurer to provide legal representation for the insured policyholder, if action is brought against him in consequence of the insured occurrence. The Insurance Bureau of Canada has long had concerns as to the current practice whereby the liquidator of an insolvent insurance company carries out this contractual commitment and treats the costs incurred as part of the liquidator's expenses payable in priority to all other claims ; the Insurance Bureau of Canada's concerns are particularly strong in liquidations to which Section 113 of the Canadian and British Insurance Companies Act applies, since in those cases the legal costs are passed on to the Insurance Industry.

In principle, it seems appropriate that indemnified legal costs under the Compensation Plan be paid over and above the $200,000 limit, but this should dictate that the Corporation has an active involvement in decisions as to the conduct of the litigation.

8. Other arrangements as to Compensation Plan payments

Claims asserted by substantial shareholders and other persons associated with the insolvent insurer would be excluded, as determined by the Board of the Corporation. Further, the detailed documentation will recognize the possibility that, in extreme cases, a major insolvency might trigger the limit on the extent to which a participating insurer could be called upon in any year to pay assessments to the Corporation ; in such case, it might be necessary for the Board of the Corporation to make decisions that will stretch out the time over which claims will be met by the Corporation.

Subject to these limitations, the Compensation Plan would apply to any claims that arise under insurance policies described in paragraph 1 either prior to the winding-up order or within 45 days after the order is made. This 45-day period should be ample time for brokers and others to notify policyholders of the need to put in place other insurance arrangements.

9. Recovery by Corporation of amounts paid

A key principle of the plan is that any amounts paid by the Corporation should be recovered by the Corporation before any additional payment is received by the policyholder as to that claim ; to the extent that resources to pay a particular claim are available from the insolvent insurer (or through third party claims), payments by the Corporation towards that claim would, therefore, be of an interim nature.

Before a payment is made to or on behalf of a policyholder, the policyholder will be required to certify that he has exhausted any available claim (including any worker's compensation claim) against any solvent insurer with whom he has a policy that covers the same loss. The Corporation would, in addition, retain a discretion to require a claimant to exhaust his rights against a third party where an obviously meritorious claim lies and where that third party, in the Corporation's view, has assets available to satisfy judgment. Further, he will be required to assign to the Corporation all of his rights against the insolvent insurer that arise under the particular policy. The consequence of this assignment for an insured with a claim of $300,000 as to which the Corporation pays $200,000 would be that the insured would receive no participation in a distribution of $150,000 made by the liquidator of the insolvent insurer ; if the distribution was $225,000, the insured would receive $25,000.

10. Post-assessment process

The Corporation will recover the amounts that it advances to or on behalf of the policyholders of an insolvent insurer through assessments levied against participating insurers who are licensed in the participating provinces in which the insolvent insured was licensed. Separate assessments would be made in respect of each participating province in which the insolvent was licensed. It is expected that these assessments will be limited to the short-fall between

amounts advanced by the Corporation and amounts recovered by it from the insolvent insurer and third parties, with bank borrowings made by the Corporation being used to finance these payments until receipt of the offsetting recoveries. Participating insurers paying assessments to the Corporation would be entitled to recoup those assessments through increases in premium rates.

No participating insurer would be required to pay, in any year, an amount in excess of 0,5% of its total direct written premiums from all general insurance sources in respect of the relevant participating province for the preceding fiscal year.

~

We believe that the Plan constitutes an effective response to the concerns of consumers and legislators. It provides effective protection against the most serious results of the insolvency of an insurer without exposing the general Insurance Industry to an unlimited liability for all claims against an insolvent insurer.

Following discussions with the various provincial Superintendents of Insurance, the Plan appears to have been well accepted. It is encouraging to note that the provinces are also strengthening their solvency requirements in support of the Compensation Plan.

Ontario has introduced legislation which would lay the necessary structuring framework for the establishment of the Plan. It will be brought forward in the fall when the legislature resumes. Likewise, Alberta and Manitoba have introduced similar legislation. In British Columbia, the legislation has recently received royal assent. However, it has been agreed by all provinces that none will proclaim the legislation into effect until the Winding-Up Act amendment has been enacted.

With the new Corporation Plan almost a reality, it behoves all Industry Managers to contemplate its effect upon us.

In the future, we will not only be guaranteeing the costs of wind-up of an insolvent insurer, but almost all the shortfall in unpaid claims.

In effect, we are guaranteeing the follies of our imprudent competitors. All companies should stringently analyse their own financial condition and be vigilantly aware of their competitors. Support

for vigorous regulation of the Industry by the Department is necessary and early efforts to bring troubled companies back onside should be applauded. Hopefully, if we exercise these virtues, the Compensation Plan will not be needed and insolvencies of insurance companies, if not eliminated entirely, will at least be held to the barest minimum."

Les sinistres d'amiantose

Les poursuites intentées contre les propriétaires de mines d'amiante et certains usagers de produits de l'amiante continuent d'affluer, aussi bien aux États-Unis qu'en Europe. Le sort de la plupart d'entre elles n'est pas encore connu, mais déjà les assureurs tentent de trouver une base d'indemnisation autre que celle qui a été choisie, dans certains cas, par les tribunaux. Un certain nombre d'entre eux se sont entendus pour signer ce qu'ils ont appelé *The Wellington Agreement.* Une cinquantaine d'assureurs et de producteurs d'amiante ont ainsi formé un organisme n'ayant aucun pouvoir coercitif, mais destiné à discuter avec les réclamants pour obtenir un règlement plus rapide, moins coûteux et surtout moins inspiré par la clémence humanitaire que montrent certains tribunaux et surtout lorsqu'il s'agit d'un procès par jury. Il est inutile de dire que si certains ont profité de l'occasion pour régler leur cas, les syndicats ouvriers en général sont opposés à cette manière de procéder. Par contre, les assureurs, dans l'ensemble, souhaiteraient que cet organisme soit accepté, afin de pouvoir mettre un terme à des réclamations souvent hors de proportion avec le mal causé et entraînant des frais énormes. Il sera intéressant de suivre le sort de cet organisme nouveau qui, de part et d'autre, permet de régler rapidement et sans les frais juridiques ordinaires, un nombre de plus en plus élevé de cas, tant que les tribunaux n'auront pas pris une attitude à peu près définitive sur la question du tort causé ou présumé et de la source du mal. *567*

G.P.