



Institute of Actuaries of Australia

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Evolution of the Industry

The sometimes troubled symbiosis of law and insurance

Peter Mann

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Symbiosis

"The living together of two species of organisms, a term sometimes restricted to cases in which the union of the two animals or plants is advantageous or necessary to both, as the case of the fungus and alga which together make up the lichen; mutualism"

Macquarie Dictionary



Mutualism and tension

Law (aka fungus)

- **Legislation and social engineering**
- **Common law (Judge-made law)**

Insurance (aka alga)

- **The issue of timing**
- **Short tail**
- **Long tail**



To look at;

- **The interaction of law and insurance**
 - **Price before cost and the essential element of prediction**
1. **Some history**
 2. **Present matters to monitor**
 3. **Future matters to watch for**



An historical perspective

- **The chicken and the egg aspect**
- **The operation of other factors;**
 - social
 - environmental
 - economic
- **Affect of the law and its development in:**
 - creating the opportunity for insurance
 - *Donoghue v Stevenson*
 - creating the opportunity for more insurance
 - professional indemnity
 - *Suncorp v Landridge*
 - changing the availability and pricing of insurance
 - Tort reform legislation
 - creating insurance itself
 - Statutory policies

Present matters to monitor

Tort Law Reform (generally)

- **The High Court and the judicial debate**
- **ACCC reporting**
- **Political and social change (How long are memories?)**



Present matters (continued)

Proportionate Liability

- **Farewell to joint and several liability**
- **The modification of the deep pocket search**
- **Plaintiffs, plaintiffs lawyers and scatterguns**
- **Anticipated increase in size and complexity**
- **More insurance claims**
- **Watch Professional Indemnity and D&O Liability insurances**



Present matters (continued)

Directors duties and D&O Liability Policies

- **Cases on wordings and tradition abandoned**
- **Expansion of duties**
- **Greater awareness of legal consequences**
- **Growth but pricing?**



Present matters (continued)

Regulation generally

- **Is there a risk of over regulation?**
- **How will we know if and when we reach that point?**
- **The resourcing and direction of the Regulators**
- **Increasing costs**



Future matters to watch for

Emerging markets and the China syndrome

- **China, India, Mexico and Russia**
- **China insurance growth**
 - First 8 months 2005 USD 41.4 billion
 - Rise of 12.52% (Asia Pulse News)
- **The rule of law and the environment for insurance**
- **Can insurance exist in a partial vacuum?**
- **The need for contractual certainty**
- **The need for effective dispute resolution**
- **Rapid development of legal framework and laws**
- **A new testing ground for mutualism**



Future matters (continued)

The eye of the storm

- **Cuthbert Heath - 1906**
 - "Pay all your policyholders in full irrespective of the terms of their policies"
- **Wollongong 1998 and the ghost of Cuthbert**
 - A near miss for local government
- **Katrina and Rita and who bears the cost again**
- **The Attorney General of Mississippi Jim Hood and the question of contractual uncertainty**



Future matters (continued)

The money or the gun

- **The handshake or the document**
- **Utmost good faith (Trust)**
- **Crossed t's, dotted i's (Pedantry)**
- **APRA Stage 2 Reforms**
- **The likelihood of more disputes**



Conclusion

- **Insurers will continue to look into a somewhat clouded crystal ball and the law will continue to operate largely with 20:20 hindsight**