CHAPTER 44

1995
The Anchorage of Choice

Bermuda, the property catastrophe domicile of the world

By 1995 insurance had become such a major contributor to Bermuda's balance of payments that *The Bermudian's* 'Focus on Business' launched the first annual financial survey of commercial insurance and reinsurance companies domiciled in Bermuda. This was a collaborative effort between *The Bermudian* and accounting firm Deloitte & Touche. It showed the following—

> 'The results of the survey speak for themselves and underscore the extraordinary strength of the Bermuda market. The 38 companies responding to the survey boast total assets of US \$41.5 billion, capital and surplus of US \$16.4 billion, and premiums earned of US \$10 billion. It demonstrates Bermuda has come a long way in a very short period of time—markets like Lloyd's of London have evolved over centuries, while Bermuda has become a viable market in a matter of decades.'[644]

Bermuda had, as *Insurance Specialist* magazine noted, 'come of age', with 1384 insurance companies and 229 insurance brokers/managers on register.[645] *The Bermudian* quoted Bradford Rich, ACE's executive VP and general counsel, as saying—

> 'Bermuda has become a major insurance marketplace in the world. Clearly, the capital and surplus that's here, the assets that are here, the companies that are here, the brokers who are here, all contribute to making this a meaningful marketplace—not just an alternative site. It is a place with a growing reputation for working hard to find creative solutions to tough insurance problems.'[646]

A later edition of *The Bermudian* wrote of Bermuda's expanding role in the global insurance marketplace that—

> '...A survey by the Reinsurance Association of America indicates Bermuda has overtaken the UK as the biggest foreign provider of reinsurance cover to US companies. The billions of dollars paid to Bermuda-based companies insure some of the world's biggest companies for the most exotic coverages. Where in the past the legs of Marilyn Monroe may have been insured by Lloyd's, today the very real risks of Big Business are being insured and reinsured in Bermuda.
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> '...Finance Minister (David) Saul reports there were 46 new insurers incorporated in Bermuda in the first six months of 1995. Most were captives, but there were also some innovative professional insurance and reinsurance companies. "The Bermuda insurance industry continues to be fertile ground for the development of unique risk-financing vehicles addressing the needs of the worldwide insurance market," he says.
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> '...Bermuda's emergence as a force in the world of insurance is unparalleled in insurance history. It took Lloyd's of London centuries to establish its reputation as the world's leading insurance centre; Bermuda

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644 *The Bermudian*, Focus on Business, April 1995, 'Insurance Survey Taps US \$41.5 Billion in Assets', p. B10

645 'International Companies 1997 their Direct Impact on the economy of Bermuda' by Brian Archer, Report of an Independent study carried out by the Ministry of Finance, Government of Bermuda

646 *The Bermudian*, Focus on Business, April 1995, 'The Bermudian/Deloitte & Touche Bermuda Insurance Survey, Bermuda's Insurance Industry shows remarkable growth', by Kevin Stevenson, pp. B22–B42, B48–B51

has earned its spurs in a matter of decades. And while there are numerous insurance domicile wannabes in virtually every corner of the globe, none have come close to matching Bermuda's success story.'[647]

Kobe earthquake

On 17 January, exactly one year after the Northridge Earthquake in California, a similar earthquake, with a momentary magnitude of 6.9, by comparison with 6.7 at Northridge, struck the populous and industrial region of Kobe, in south central Japan. The major difference between Kobe and Northridge was in relation to the extent of loss. In a few seconds much of the city of Kobe itself was massively damaged if not completely destroyed. The EQE International Summary Report of April 1995 estimated Kobe's property repair costs to be somewhere between US $95 billion and US $147 billion—many times the cost of Northridge. This did not include losses due to deaths or injuries, nor losses to business and production. Some five or six thousand people were killed and some 35000 were injured.

It is extremely difficult to quantify the actual, ultimate costs of any catastrophe on such a scale and with such a range. Later estimates of cost would go as high as US $180 billion (see Chapter 47 below). By any reckoning Kobe was one of the worst natural disasters in modern times. Yet in terms of the unprecedented property damage and other effects overall, the impact of the earthquake on property catastrophe insurance carriers was relatively slight, especially on the non-Japanese market, both because offshore insurers had not yet taken up a major place in the Japanese market and because Japanese insurers were inclined to look on such natural catastrophes as virtually uninsurable anyway. Kobe did not have as much an effect on international net profits as might have been expected.

The Oklahoma bombing

Just after 9 a.m. on the morning of 19 April 1995 a truck bomb exploded outside the Alfred P. Murrah Federal Building in downtown Oklahoma City, blowing off the front of the building, collapsing the rest, and killing 169 innocent men, women and children. At first it was widely assumed that this was a sequel to the previous car bombing of the World Trade Center in New York, that had been carried out by international terrorists just over two years earlier, in February 1993. Instead it was quickly discovered that this latest atrocity was the work of home-grown terrorists, American citizens, in particular Timothy McVeigh, a man who was enraged to fanatical hatred by what he saw as excessive government interventionism, and who timed his action to coincide with the second anniversary of a deadly shoot-out and fire at the compound of a group calling themselves the Branch Davidians in Waco, Texas. The explosive used in the Oklahoma bombing had been made from a mixture of agricultural fertilizer and fuel oil. Understandably enough, there were those in the insurance industry who became somewhat paranoid about the use of such everyday and readily available chemicals for the making of bombs, but there was little if anything to be done about that.

The global insurance industry begins to soften across the board

Although barely a decade had passed since ACE and XL were created in response to the liability capacity crisis of the 1980s, the balance had meanwhile begun to swing the other way. The excess liability market was now softening fast. ACE and XL were finding it difficult to show growth in their core operations owing to an abundance of capacity. *The Bermudian* reported on the changing liability scene as follows—

[647] ibid. September 1995, 'The Challenge of Success', by Kevin Stevenson, pp. B10–B14

'The excess writers report that beginning in the latter part of 1994, there has been an increase in competition, particularly in D&O and general liability cover. Errors & Omissions and property are experiencing stable pricing, but there are some players in the market willing to write D&O insurance at prices up to 50 per cent below realistic levels. General liability pricing has declined on average about five per cent but remains profitable.

'XL is selling similar limits on average across all lines, but at higher attachment points than a year ago, reflecting insureds' higher retentions and the availability of additional underlying insurance coverage. Starr reports prices remain relatively flat, with some modest exposure and inflationary increases. Coverage terms are similar to last year with very few expansions of coverage, and relatively few coverage restrictions being imposed. Retention levels experience continued pressures from the US, UK, and Europe—expected to continue through to 1996. "The difference between the market conditions in the mid-1980s and today is probably summarized in one word: Capacity," says XL Chairman, President and CEO Brian O'Hara. "In 1986, there was no capacity available to write excess liability at the levels that XL provides, nor were there the amounts of limits offered. Today, there is much more capacity available both in the Bermuda market and from onshore US companies. Buyers who are not concerned about continuity and stability of coverage can shop for the lowest price from a wider range of markets," says O'Hara. "Additionally, reinsurers seem more willing to lend their capacity to primary companies who want to write these classes of business. Therefore, we have to work harder and smarter and continue to evolve our existing products and develop new products to meet our clients' needs. XL continues to explore new areas where we can use our expertise and capital to add value."'[648]

Despite an active hurricane season in 1995 and the huge Kobe earthquake, the property catastrophe market was softening: *The Bermudian* quoted Henry Keeling, Mid Ocean Re's Senior VP and lead underwriter as saying that—

'Bermuda will become even stronger and increasingly seen as one of the premier destinations for insurance and reinsurance buyers...Undoubtedly, the Bermuda-based reinsurers specializing in property catastrophe business have made an extremely valuable contribution to the market during 1993 and 1994. Whilst the market is not uniform in terms of the balance of supply and demand, the Bermuda companies have contributed significantly towards satisfying the needs of major insurance companies around the world. Nevertheless, we have to ensure that we retain our professionalism and innovation and not become complacent with our success...Even with the additional capital from the Bermuda market, the global need for property catastrophe reinsurance remains unsatisfied, though the balance between supply and demand is far from consistent by geographic zone. In general terms, the 1995 renewals have progressed much as we anticipated, with demand for capacity remaining unsatisfied in the US, but generally satisfied elsewhere around the world...This has led to some price-softening in the international market and, in some cases, to a degree which we feel is unjustifiable...Other parts of the world are still satisfactorily priced and particularly in the US there is still insufficient capacity fully to meet demand for the major buyers. We are finding that the most significant competition, in terms of price, is coming from the London company market on international business, and the United States domestic market on US business.'[649]

Reactions magazine had the following to say—

'...Some observers believe that the Bermuda companies averted a potential disaster in 1992-1996. "Had they not arrived, there would have been a crisis in the United States, and possibly worldwide, with regard to primary coverage," says Michael Frinquelli, insurance analyst at the New York securities house Solomon Brothers. "They took up the slack at a time when Lloyd's had practically disappeared form the market...So much slack was taken up, in fact, that rates began coming down last year—unthinkable in the dark days of 1993. At renewal this year, rates fell by anything between 10% and 15%, a decline that

[648] *The Bermudian*, Focus On Business, September 1995, 'Ringing the Changes', by Kevin Stevenson, pp. B16–B18

[649] ibid. 'Prop Cats Pounce', by Kevin Stevenson, p. B20

was not just due to the capacity brought to the market by Bermuda. Lloyd's also launched something of a comeback as the problems that had been plaguing the market began to subside.'[650]

Despite the softening of the catastrophe reinsurance market, underwriters said there was still not enough capacity in the world to pay for the big one. *The Royal Gazette* reported Anthony Taylor, underwriter for Wellington Underwriters Group Ltd. and one of four insurance executives taking part in the second Bermuda Insurance Symposium's panel discussion on global property catastrophe capacity, as saying—

'Hundreds of American insurers could go out of the business when "the inevitable" US $50 billion catastrophe strikes the US...There is little possibility of a US solution under existing insurance mechanisms backed by reinsurance. The exposures are now far too high...The US insurance industry has a capital base of US $189 billion which cannot effectively support a loss of US $50-US $100 billion... US reinsurers provide US $20 billion in capital and surplus...In the United States, when the "inevitable" US $50 billion event occurs there won't just be 10 small companies bankrupted (as by) Andrew, there will be hundreds of small companies and some of the largest in the land bankrupted...The world is neatly divided. Outside the United States there is an oversupply of capacity and rates will be driven down.'[651]

The continued soft market forced a change as to how insurance was bought and sold. The industry sought more innovative ways to repackage its products while clients demanded more for their money. *Risk Management* commented that—

'People who read the annual reports of most insurers or brokers in the late 1980s and early 1990s would have seen hopeful predictions that the market was about to harden within six to 12 months. After repeating this pledge every six to 12 months, most industry observers stopped trying to predict when or if the soft market would end.

'While many insurers were dropping some forms of coverage (whether by product line, region or both) or waiting for the market to change, an increasing number of insureds were considering other options. New Bermuda companies that emerged to provide liability coverage after the mid-1980s absence of traditional insurance also recognized the need for catastrophe capacity. Perhaps as important as providing capacity, the Bermuda companies brought bankers and investors willing to approach risk transfer from a financial perspective and to provide new options to insureds into the insurance markets. As a result, many organizations are considering multiple-year finite risk contracts particularly suited to low frequency/high severity risks such as catastrophes. Others are exploring the use of alternatives to cover their catastrophe exposures.

'...The development of new capacity continues today from a variety of efforts. Most of these efforts will benefit insurers more directly than insureds, but an ample supply of coverage should help maintain today's stable rates. For example, the Chicago Board of Trade's (CBOT) catastrophe futures...can provide insurers with a potential financial hedge against catastrophic loss...

'Even newer is a proposal developed by a reinsurance broker to introduce new investment instruments to attract additional capacity to catastrophe markets. The plan, still on the drawing board, promises to increase capacity by spreading catastrophe risk among institutional and individual investors. A growing number of reinsurance companies are also getting into the act by helping large organizations structure finite risk contracts, large retentions and self-insurance programs.

'Another newcomer is the Catastrophe Risk Exchange. This New York based computerized exchange, approved by regulators this summer, promises to allow insurance companies to swap policies and reduce their exposure to large losses. Companies with large exposures to Florida hurricanes, for example, can exchange policies with companies that carry large California earthquake portfolios. It's too soon to say how well this plan will work, but if it does, it could help maintain industry capacity and prevent rate increases.

[650] *Reactions*, May 1995, 'Struggle for Supremacy', by Patrick Harverson, pp. 12–17

[651] *The Royal Gazette*, 11 May 1995, 'Insurance Symposium focus, Catastrophe cover still insufficient', by Doug Ashbury, p. 11

'...Although these new approaches for financing catastrophe risk seem promising, many of the investment-related proposals currently offer more potential than protection. Without a track record of claims payment, some insurers are going to be reluctant to use these facilities. This reluctance, for example, is one of the factors hindering wider use of the Chicago catastrophe futures. Still, given the track record of some insurance companies following a disaster, a growing number of organizations will be willing to include these new facilities in their disaster management programs.'[652]

Lloyd's reconstruction and renewal programme

The sea of change predicted in 1992 for the Lloyd's market was coming faster and more dramatically than anyone had expected. Lloyd's had managed to look as though it would survive because of its three-year prior loss results. By the time Hurricane Andrew's results were accounted for in 1995, compounded by a bad run of losses and the soft market, it became very evident that Lloyd's was in serious trouble. After suffering unprecedented losses of nearly US $15 billion between 1988 and 1992, Lloyd's, the 300-year-old grandfather institution of insurance, was teetering on the verge of bankruptcy. An estimated 70,000 jobs were at risk. Lloyd's was being overwhelmed by litigation from investors against the market professionals who were not paying their losses and Lloyd's had to fund centrally a huge, ever-increasing sum of money.

Lloyd's at that time underpinned, by way of reinsurance, most of what kept everything going in the global markets. John Charman, Deputy Chairman of Lloyd's in those days, was of the opinion that the failure of Lloyd's could well bring about the end of insurance, as the world had known it. Gross liabilities at that time were rumoured to be in excess of £70 billion, an almost irrecoverable amount. The resultant bad debt alone would have been devastating to the global economy. Where would the cushion have been should Lloyd's have failed? Would the United Kingdom Government have enough capital and/or interest in bailing out the old Lloyd's institution and ultimately, for that matter, the global economy? A pretty daunting thought even now. It was these appalling prospects that in May of 1995 led Lloyd's to unveil its controversial reconstruction and recovery programme. John Charman was one of a five-member team put together under the direction of David Rowland, Lloyd's Chairman, to try to save Lloyd's and to reconstruct the Society so that it could go forward into the future.[653]

The Wall Street Journal reported on the Lloyd's crisis—

'...then almost everything that could go wrong did go wrong. Disasters such as the *Exxon Valdez* oil spill and Hurricane Hugo battered Lloyd's names as agents failed—negligently, a court later ruled in one major case—to buy enough reinsurance to spread the risks. The losses were compounded by huge claims and court awards in asbestos and pollution cases, many from so-called long-tail US liability policies underwritten by Lloyd's decades ago.

'The pain wasn't spread evenly. While some syndicates, especially those whose names were relative newcomers, sustained heavy losses, others remained profitable. And many agents raked in hefty fees despite the losses to their names. Some money losers contend that they were put into the riskier syndicates while the safer, profitable ones went to insiders.

'Overwhelmed by "cash calls" to pay claims, names began fleeing Lloyd's. Their ranks plummeted to just 14, 853 this year from a peak of 32,433 in 1988.

'With its problems intensifying, Lloyd's took several steps. It imposed in its names a special US $600 million levy in the early 1990s to shore up its central fund. It allowed corporate capital into the market, for the first time, to broaden its financial base. And last year it offered to pay aggrieved names US $900

[652] *Risk Management*, October 1995, News Analysis by Dave Pelland, 'Seek and Ye Shall Find', p. 80

[653] Interview with John Charman, 6 August 2002

million to help cover their losses, with much of the money coming from agents' errors and omissions insurance, which is akin to doctor's malpractice policy. But angry names rejected the settlement as inadequate. Not only would many still have been left owing money on their losses to date but the offer didn't cap future liabilities.

'Lloyd's insisted initially that it wouldn't budge. But names, some of whom accuse Lloyd's agents of fraud, decided to simply wait out Lloyd's in what has become a game of high-stakes brinkmanship. Win or lose, the names could tie Lloyd's up in the courts for years.

'Now, some syndicates are so strapped for cash that they are borrowing money from solvent names to cover unpaid debts of other names. "This intermingling confirms finances are very tight," says Christopher Stockwell, who heads a group representing dissident names.

'Lloyd's responds that its longstanding rules "expressly permit such borrowing and lending, although agents must act prudently." Regulators agree that the practice is acceptable on a modest scale and in normal times. But people close to the New York Insurance Department say it is expected to frown on that in the future because of the scope of the shifting and Lloyd's problems.'

'Now, with the cash squeeze worsening, Lloyd's is back at the drawing board. One option is another special levy to replenish the central fund, which at the end of 1994 had just US $737.5 million to cover names' unpaid debts of US $1.06 billion—a gap that is believed to have widened. The new levy could amount to another US $600 million, spread out over several years.

'Solvent names may balk at a levy on the ground that it amounts to yet another subsidy for deadbeats. But most probably will go along, if only because it is in their self-interest. One solvent name notes, "If a drowning man in the sea can see there is a strong life raft, and if he can get his hand on a piece of rope, he'll reach for it."

'Coming up with a settlement offer that satisfies aggrieved names may be tougher. There is a limit to the amount of errors-and-omission insurance, the main source of the money for a settlement. Moreover, some money-losing names belonged to syndicates that covered errors and omissions liability—meaning that, in effect, they would be paying part of the settlement to themselves out of their own pockets.

'As a result, the dissidents have little incentive to settle without a much better offer, and thus have what some consider veto power to block a major element of Lloyd's restructuring plan. Mr Sinclair of Willis Faber sees the crisis reaching a crescendo— "The disgruntled names are trying to ransom the market. They're saying, If you don't give us a deal, we don't give you the market."

'The third major piece of the puzzle involves Equitas, a company Lloyd's plans to launch next year with the aim of splitting off Lloyd's past problems to give the rest of the exchange a fresh start. To finance Equitas, names would pay a reinsurance premium for it to take over the risks; insolvent names would use the money from a settlement to pay their share of the premiums. Thus names, both solvent and insolvent, would be off the hook.

'That is the idea. The trick, of course, is accurately predicting future claims, which Lloyd's woefully underestimated in the past. Then Lloyd's must provide Equitas with sufficient funds so it won't later run out of money. Accounting rules will help. Instead of Lloyd's practice of reserving for future losses at 100%, Equitas, because it is to be a company, would follow the usual insurance practice of discounting future losses.

'In the end, how can names be confident enough that the plan will work to support it? "You have to go with your gut or flip a coin", says one name, who didn't want to be named. Mr Foster of Roberts & Hiscox, the agency that represents names, has no doubts that it will— "My view is that a solution will be found, because a solution has to be found."'[654]

[654] *The Wall Street Journal*, Europe, 15 May 1995, 'Market at Risk: Hit by Huge Losses, Lloyd's of London Struggles to Survive, Insurance Exchange Seeks to Raise Money and End Disputes with Investors, Rope for a "Drowning Man",' by Lawrence Ingrassia and Dana Milbank, p. 1, Copyright 1995, Dow Jones & Co. Inc.

Lloyd's failure would undoubtedly have devastated the global insurance and reinsurance markets and it would have trickled over to affect world trade, because of Lloyd's presence in the insurance of specialty risks. Many feared that if Lloyd's failed then airlines would be grounded, tankers would be unable to operate, some 70,000 people would lose their jobs and 30,000 names would face bankruptcy. In its three hundred year history Lloyd's had amassed a significant market share of all that keeps the world economy in operation. Without its immense and impenetrable web, the world would have been paralysed overnight. Perhaps that was why the big Bermuda insurers took the necessary steps to infuse capital into this 'venerable' institution. Or were they being drawn into the web without understanding that it was unravelling all around them, owing to the unscrupulous practices of some greedy underwriters, to archaic rules and to the lack of transparency? Who is to be the true beneficiary of the investment in Lloyd's? Only time will tell.

Bermuda's response to the changing market

The provisions of the 1995 Insurance Amendment Act, as they pertained to a review of the regulatory environment, have already been touched upon in Chapter 44. The Act received government assent on 29 March 1995 and came into force one month later, on 29 April. Many in the industry looked on it with a favourable response. *The Bermudian* reported on the new Act as follows—

> '...The new insurance regulations were the result of the recent changes in the Bermuda insurance marketplace, which made obsolete the original Insurance Act of 1978, when the primary source of business was captive insurance. The Bermuda government believes the revised insurance laws go a long way to allay fears that Bermuda is ill equipped to handle the new breed of insurers and reinsurers.
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> The industry itself believes the revised regulations will "enhance Bermuda's attractiveness as an insurance domicile and the marketability of its companies in the international community," says Global's (Fred) Deichmann (chief financial officer).
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> "The new regulations demonstrate a considerable move forward to creating a category - 4 company, which is a reasonable blend of the US and UK regulatory systems," says Tempest Re's President and CEO John Hollis.'[655]

At this time Malcolm Butterfield decided to retire as Bermuda's Registrar of Companies and was succeeded by Kymn Astwood, who had spent the previous five years heading up the insurance division of the Registry. He was instrumental in making certain that all insurance companies were in full compliance with the new Act. A chartered accountant by background, Astwood went to the insurance industry by way of Ernst & Young, where he worked mainly on the insurance and reinsurance audit side until August of 1990 when he went to work for the Registrar of Companies as Inspector of Companies and to manage the insurance division. The principal challenge of his new position was the successful implementation of the 1995 Insurance Amendment Act. The timing was awkward because his department was going through major changes and renovations that complicated the work of adaptation to the new requirements of the Act.

The Bermudian reported his comments on feedback concerning the Act—

> 'The Insurance Amendment Act 1995 has been very well received overseas, based on what I've read in the international insurance press, as well as on discussions I've had with international insurance executives visiting the Island. The 1995 Act enhances the security of policyholders and we view this as further enhancement of the Bermuda insurance market. The main concern of buyers of insurance is that promises made will be promises kept, and since our market is now segregated, the department has the ability

[655] *The Bermudian*, Focus on Business, April 1995, The Bermudian/Deloitte & Touche Bermuda Insurance Survey, 'Bermuda's Insurance Industry shows remarkable growth', by Kevin Stevenson pp. B22–B42 & B47

to focus more of its resources on areas that deserve it more—namely Classes 3 and 4. The buyers of insurance recognise that and realise their security will be enhanced as a result.[656]

The Royal Gazette reported that US regulators remained suspicious. Thus Arkansas state insurance commissioner Mr Lee Douglas said to the audience at the Bermuda Insurance Symposium—

'Bermuda's new insurance regulations may eliminate some state regulators' concerns about Bermuda as an offshore jurisdiction. But most state regulators in the National Association of Insurance Commissioners (NAIC) still view offshore insurance markets in a negative light. Most of them, unfortunately, view the offshore market with some scepticism. They fear secrecy laws, where they would not be able to get information they need about companies. The new regulations in Bermuda will alleviate some of the fears. But people don't want to hear that claims are not being paid because we (United States regulators) have not been able to get information from an offshore jurisdiction.'

In the same article *The Royal Gazette* reported Mr Alan Levin, managing director of Standard & Poor's Insurance Rating Services as saying that—

'...the test of any regulation comes when an insurer begins to get into trouble, especially when there is pressure being brought by the public and the Press to protect the policyholders. He said solvency standards of the past tended to fail in a crisis because they had alarm thresholds that were traditionally set too low. They were also too simplistic in an age where companies were becoming more and more complex in the structure of their business and the risks they handled. He advocated a risk-based capital standard, which would give regulators a better opportunity to intervene for positive effect before a company had suffered irreversible damage. He agreed that too often regulators tended to "circle the wagons" when there was trouble, instead of keeping the lines of communication open with their counterparts in other jurisdictions. Mr Levin said he was surprised by the slowdown in recent years in the rate of insurance company failures, but he predicted that over the next few years, current problems being experienced in the industry will really come home to roost.'[657]

Compliance with the 1995 Amendment to the Insurance Act came with much confusion. As a matter of fact by year-end *The Royal Gazette* reported the following—

'Hundreds of captive insurers are registered under Bermuda's new insurance regulations in the wrong class. Insurers who applied under one category in many cases had to be moved to another. Regulators had to spend considerable time reviewing an estimated 150 to 200 imperfect applications, slowing down processing time. And Registrar of Companies, Mr Kymn Astwood, has conceded that the new regulations themselves may have promoted some of the confusion.

'...Mr Astwood said, "Some companies were just not clear as to how their company was classified under the new law. There is a lot of judgment involved in the process. It's far from clear. The ultimate judgment is that of the Minister...It involved companies that would apply to be registered in class one or two, but which should be in a higher class. The issue surrounds the writing of unrelated business. Captives are typically class one insurers, but there were some which wrote some third party business, and they had a portfolio of reserves that they were running off. There were a lot of companies we found that still applied for a class one license, even though they have this run-off book of business. But we had decided to keep the class one free of the captives with third party business, by placing all of them in class two...We should have all of the applications now. (There was a deadline of September to prevent a clogging of the system at year-end.) The Minister (Minister of Finance Grant Gibbons) will have signed off on every application before the new year."'[658]

[656] *The Bermudian*, Focus on Business, September 1995, 'Setting the Rules, New Registrar of Companies vows to keep Bermuda competitive', by Rosemary Jones, pp. B50 & B52

[657] *The Royal Gazette*, 1 June 1995, Insurance Symposium Focus, 'Insurance regulators still suspicious of offshore domiciles', by David Fox, pp. 11 & 12

[658] *The Royal Gazette*, 22 December 1995, Business, 'Confusion greets new insurance rules', by David Fox, p. 37

The market leader

Following the announcement of Bermuda's new insurance regulations came the great news that by 1995 Bermuda had established itself as the leader in the property catastrophe field, despite huge losses and the softening market. There were eight new property catastrophe reinsurers now on the island, with US $4.3 billion in capital and surplus, US $5.1 billion in total assets, and US $1.1 billion in premiums earned in fiscal year 1994. According to *The Bermudian*—

> '... The (eight new) reinsurers collectively earned US $603.5 million in net income last year, despite losses and loss-associated expenses of US $505 million and realized capital losses of US $57 million..."The Bermuda reinsurers satisfied a need for property capacity, and the world market has absorbed that capacity very well, as evidenced by the relative success each of the companies has enjoyed," says Partner Re chief financial officer Scott Moore.
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> '...Keith Hynes of Renaissance Re puts it simply: "Bermuda has matured into one of the leading property markets in the world." ...Hynes estimates the Bermuda market now accounts for more than 25 per cent of the worldwide property catastrophe premium, estimated by some to be US $6 billion annually...a market share that has been established since the first prop (property) cat (catastrophe) company, Mid Ocean Re, opened for business in November 1992.
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> '...(Henry Keeling, said) " We also believe that the Bermuda market in a wider context is now readily accepted by the majority of reinsurance buyers and, indeed, is seen as providing an essential part of most property catastrophe reinsurance programmes."
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> 'Skeptics last year predicted the infusion of so much capital in such a short period would depress rates to unrealistic levels. The January 1, 1995 renewals proved them wrong.'[659]

A darling of the market

While many international insurers were struggling to keep up with the expectations of analysts and shareholders, in 1995 Mutual Risk was the darling company of the captive insurance industry. Analysts were giving the company glowing reviews. 'Well-capitalized, with a pristine balance sheet,' declared Dean Whitter, while Prudential stated MRM's 'growth and profitability have generally been well above most insurers.' *Forbes* magazine included Mutual Risk in its list of the '100 Best Small Companies in the World', while Standard and Poor's listed the company in its *SmallCap 600*, a new index designed to track the stock performance of small capitalization companies.[660]

On top of MRM's impressive numbers with its assets exceeding US $1 billion in 1994, Morgan Stanley described Mutual Risk as 'the best marketing organization...smart, well-trained, aggressive and user-friendly.'[661] *Bermudian Business* interviewed forty two year old Robert Mulderig, the man behind the MRM machine—

> '..."I guess we found a particularly attractive area of the alternative market to concentrate our business," "We're a sales and marketing driven company and sticking to what we know and do well has brought us steady results...Our goal is to continue to grow the company by 20 per cent per year, and if we are successful in doing that over the next five years, that would take us to something over US $100 million a year in fees."
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> 'Mutual Risk is known as the market leader in providing risk-management services to clients seeking an alternative to traditional commercial insurance for certain risks, especially workers' compensation. The alternative market, which includes self-insurance and captive insurance programmes, now represents

[659] *The Bermudian*, Focus on Business, April 1995, The Bermudian/Deloitte & Touche Bermuda Insurance Survey, 'Bermuda's Insurance Industry shows remarkable growth', by Kevin Stevenson, pp. B22–B42 & B48–B49

[660] ibid., September 1995, 'Mutual Risk aims for new record', by Kevin Stevenson, pp B38–B40

[661] ibid.

about one third of the commercial insurance market in the US.

'Mutual Risk's income is principally derived from fees for the services it provides to clients. These services include designing insurance programmes, providing or managing a captive insurance company vehicle, providing a licensed insurance company to issue primary insurance policies, and brokerage services to transfer excess risk to the reinsurance market. The company typically earns between 11 and 13 per cent of the client's premium in fee income.

'...Listed on the New York Stock Exchange since 1991, Mutual Risk offers brokers and clients additional services through its various subsidiaries that complement its captive management operations. Marketing, reinsurance placement and programme design are coordinated by Commonwealth Risk Services, Inc., while policy-issuing services can be secured through Legion Insurance, a US domestic insurance carrier. London market, including Lloyd's, can be accessed through MRM Hancock Limited, while Park International serves as an avenue to Bermuda-based specialty companies such as excess liability giants ACE, XL, Starr Excess and CODA. "I'm not sure that there are many other companies, at least of significant size that offer both policy-issuing services through a domestic US insurance company and rent-a-captives, plus captive management services in an offshore jurisdiction," says Mulderig. "That alone sets us aside, in that we can readily offer in-house all of the services that a client requires to structure a programme...The segment of the market we are addressing generally is the smallest-size company considering the captive alternative...We generally don't compete very effectively with the huge Fortune 500 companies that have gone the captive route years ago. There isn't a lot of growth in that market. We see growth in bringing first-time participants into the alternative market."

'Mulderig adds, 'Marketing to cater to such clients is therefore one of Mutual Risk's strong suits. Its clients are often unversed in the alternative insurance market. "Over the past 15 years we have developed, I think, a very solid marketing team in the US that goes out and sells this programme and gets clients sufficiently interested to come in and try this world of the alternative market for the first time."

'Mutual Risk is probably the only Bermuda-headquartered management company that has a very significant presence in the US through Commonwealth Risk Services—which has offices in Philadelphia, Orange County, California and London—and Philadelphia-based Legion Insurance, a licensed insurer in 49 states and the District of Columbia. In 1994 Mutual Risk also bought the Worksafe Group, a California firm offering proprietary loss-control services to reduce workers' compensation losses for clients throughout the US. "We have paid a price for that US presence over the years in terms of paying a full US corporate tax rate," says Mulderig, "but we're convinced that marketing presence in the US has been a key to our success. This is very much a relationship business, and our marketing people's relationships with not only the brokerage firms, but also the producers within, have been key."

'The fact that Mutual Risk pays tax on income at an effective rate of 35 per cent raises two important points. It underscores the long-held tenet of captive insurance leaders that tax is no longer a deciding factor in setting up operations in Bermuda; and that Bermuda is considered sufficiently important a market for a company like Mutual Risk to resist the temptation to consolidate its operations onshore. "There is no question that, number one, we have to be in Bermuda to effectively compete and, number two, that our presence here has been a tremendous reason for our success...Bermuda is where the action is in terms of the captive business and the whole alternative market. This is where it developed. This is where the world's expertise sits these days, and without it, it would be like being in the securities business without Wall Street," says Mulderig.'[662]

ACE gets into aviation

Surveying the global marketplace for growth opportunities, in a bid for diversification, ACE decided to enter the aviation market when it became evident that the London market was experiencing

[662] *The Bermudian*, Focus on Business, September 1995, 'Mutual Risk aims for new record'. by Kevin Stevenson, pp B38–B40

serious financial problems. ACE recognised that Lloyd's was the world's largest insurer of aviation and therefore they had to be a fall back in the event that the key marketplace was experiencing difficulties. By entering this new line of business, ACE became the first and only Bermuda company to enter the aviation market. However, according to Brian Duperreault, Chairman, President and CEO of ACE, it was a natural for the company to expand into the aviation marketplace because they were already in the satellite business as a specialty area. Therefore they had some familiarity with this sector. In addition, the Bermuda excess liability form covered aviation products that were nonessential to flight. Duperreault was comfortable bringing in a new aviation products team to underwrite aviation products that were essential to flight because he felt there was no overlap between the risks that the satellite team and the excess liability team were writing. ACE soon became the leader in increasing the cover available for airplane groundings. However, once ACE acquired several syndicates in Lloyd's there was a conflict and the aviation team in Bermuda was moved back to London.

Industry and government at odds about rising costs

With Lloyd's teetering on bankruptcy and the Bermuda international insurance industry burgeoned, the Bermuda government began looking to the international business industry to help fund some of Bermuda's infrastructure problems. Finance Minister Dr David Saul, citing unprecedented budgetary costs, such as running the airport, which was taken over by the government after the United States Navy pulled out, announced that the Bermuda government decided to roll together both the employment tax and the hospital levy into an overall payroll tax. The international insurance industry was not at all pleased because the new proposal substantially increased their operating expenses.

For the first time, many in the industry spoke out openly about the increasing costs of doing business in Bermuda. Brian Hall, Chairman of the Insurance Advisory Committee and head of Johnson & Higgins, said, "We as a company took as a body blow this change in employment tax. We have 160 people on staff, and our total tax bill was US $1.2 million in what is supposed to be a tax-free environment. How much is too much? It does cause one to consider one's long-term future."

'The government's budget earlier this year showed that one of the "partners" is willing to forego consultation for the sake of political expediency, which is a truly worrying sign, especially as the country considers and debates the move to Independence,' says John Weale, VP for offshore management services at AIG Insurance Management Services.[663]

The timing could not have been worse for the international insurers in Bermuda because of the soft market in which they found themselves. Already fighting the issue of trying to curb internal expenses, the last thing they needed was to be burdened with higher taxes. However, the Bermuda government saw no alternative other than the new payroll tax of raising revenues that were desperately needed to fuel the economy. Contrary to the belief of many around the world, Bermuda does in fact impose taxes on its corporations and is therefore not to be seen as simply a tax-free haven.

The Independence cloud still lingers

Meanwhile the debate about whether Bermuda should seek independence became a hot potato for the island. Reaction from the international insurance arena was very mixed. The new Registrar of Companies, Kymn Astwood, summed up the debate very clearly—

> 'What's more important in the minds of international business executives is this—they want the process managed effectively to ensure the minimum amount of disruption to their business activity. Secondly, they are concerned that a disproportionate share of the cost of Independence doesn't get passed on to their com-

[663] *Risk & Insurance*, October 1995, 'Industry partnership shows strain', by Kevin Stevenson, p. B4

panies. Certainly, that's an area of utmost importance. We need to ensure we provide value for money, and the competition—from places like the Cayman Islands and Vermont—is intense right now.'[664]

Even the Cayman Islands seized the opportunity to use Bermuda's Independence debate to their advantage, as reported by the *Bottom Line* Magazine—

'Cayman has made a play for Bermuda's international business. Our colonial cousins in the Caribbean waged an unofficial but not insignificant campaign to capitalize on market uncertainty during Bermuda's "Independence debate". They sought recognition as the premier offshore business centre. In private and in public, business people from the Caymans dwelt on the Bermuda debate, with some glee. In June a realty company in the Caymans speculated that Independence for Bermuda would mean a boom for the Caymans. Cayman Islands Realty and Development (CIRD) Ltd. stated: "The most intriguing situation to arise recently is the likely Bermudian bid for Independence from England. Should that happen, Cayman's offshore industry will receive a huge boost." The report, signed by CIRD managing director J.C. Calhoun and six of his staff, pointed out that they were getting inquiries from investors and other professionals looking to relocate business from Bermuda to the Caymans. Privately, it was clear Caymanians saw an opening.

'One Caymanian official remarked during a social hour at Risk & Insurance Management Society (RIMS) conference that she was tired of having Bermuda crammed down her throat. At the same conference in San Francisco people wore hastily assembled buttons promoting their jurisdiction as the one that was proud to be a British possession. A message to business that Cayman was more stable than Bermuda. If some Bermudians didn't believe that Independence would change much for Bermuda business, at least the Caymanians thought it would.'[665]

Johnson & Higgins celebrates 25 years in Bermuda

In lively contrast to such foreign disparagement, Bermuda's leading captive insurance manager—Johnson & Higgins—celebrated its 25th anniversary on the island in a novel and constructive way. *The Bermudian* recorded that…

'A committee brainstormed and came up with a three-pronged plan to celebrate the milestone on May 11, 1995. Staff and alumni would visit schools to talk about insurance and the role of J&H in the industry; a fair would be held for nursery students, and community centres would be visited by work groups. The fair at Victoria Park—steps away from J&H (Bermuda) headquarters—was perhaps the most visible effort to commemorate the… anniversary. Bermudians stopped by to ogle balloons, rides, cartoon characters, even a magician—a staff member who put on 14 shows throughout the day.

'"The fair crystallized the entire event," says (Phillip) Simpson (VP of J&H Bermuda). "Thousands of nursery school kids went through the park. Parents called up the next day just to say thank you. We had such positive feedback. The camaraderie coming out of the fair was really exceptional, so much so that there is a bit of groundswell among our staff to do something on an annual basis." Work parties at Island community centres also left lasting impressions that included painting playgrounds for hopscotch or shuffleboard, or rooms and equipment such as kitchens and tables. "Twenty-five people went to the Sunshine League (home for orphans) where there was yard work, clearing up and painting to be done," says Simpson. "We didn't think there was all that much to do, but as it turned out we could have had 100 people there and there still would be more that needs to be done. The entire day was an unqualified success."'[666]

In personal and imaginative ways J&H (Bermuda) had vividly expressed a sense of gratitude to the wider community of which it felt itself to be a part.

[664] Quoted in *The Bermudian*, Focus on Business, September 1995, 'Setting the Rules, New Registrar of Companies vows to keep Bermuda competitive', by Rosemary Jones, pp. B50 & B52

[665] *Bottom Line*, November 1995, 'International business, Sibling rivals', by David Fox, pp. 42–47

[666] *The Bermudian*, Focus on Business, September 1995, 'Spirit of Giving—Johnson & Higgins marks a milestone with a day of community action', pp. B46–B47

The EMLICO affair

Electric Mutual Liability Insurance Co. (EMLICO), a long time liability insurer, had moved to Bermuda at midyear. A few months later it declared itself to be massively under reserved for pollution and asbestos claims and insolvent by more than US $500 million. Litigation followed, which included allegations that the insurer and its client had so engineered the collapse as to take advantage of Bermuda's favourable liquidation laws.[667] 'Some of EMLICO's reinsurers have charged that the move to Bermuda was part of a fraudulent conspiracy that violated Bermuda's criminal laws. However, while the situation is under investigation by both US and Bermuda authorities, the feeling is that it is unlikely to curtail captive formations as the ever expanding list of insurance services offered in Bermuda outweighs any fallout that might occur…'[668] In any case the upshot of the litigation was that EMLICO prevailed.

Formation of the Insurance Information Office

The EMLICO saga, the ongoing anxieties of the Bermuda Fire and Marine, and the changing insurance landscape, caused many to seek a central base from which to promote the attractions of the Bermuda international insurance industry. There had been until then no single, central source of reliable generic information, other than a small amount of important statistical material produced by the Registrar of Companies. Faced with an expanding industry and a growing demand for marketing and informational capabilities, the Insurance Advisory Committee (IAC) realised that there was much more it could be doing to tell the world about the Bermuda market. This led to the creation of the Insurance Information Office (IIO), an idea conceived and enacted by the Marketing Committee of the IAC and one whose time had come. The IIO had a big message, a small budget and no physical location. To tackle the financial challenge, a business plan was drawn up and presented to Government and the industry in a series of private meetings. At the same time the Bermuda Insurance Institute, then about to move into the Cedarpark Centre, was asked if it would be interested in housing this new entity. The BII membership agreed. Government and most of the industry provided the funding. Roger Scotton, a respected news reporter with years of experience in covering the development of the Bermuda business scene, was appointed as the first Insurance Information Officer.

> 'The mission of the IIO was to provide a point of access to generic information about the international insurance industry in Bermuda, to manage enquiries and request for information, and to drive them towards this access point, to act as the industry's official collection point for relevant data, to regularly publish information about the Bermuda insurance and reinsurance marketplace, to forge links with the insurance/reinsurance trade associations and other bodies around the world. The early days of the IIO were difficult because private sector support in Bermuda was far from unanimous and the competition from other domiciles and business centres was ferocious. But the Committee was unwavering in its support of what it regarded as a mission critical function.[669]

Bermuda's wake up call

At the news that Hopewell, Fred Reiss's reinsurance company of captives, had closed after 23 years in business owing to the lack of proportional reinsurance available, Kathryn McIntyre, editor of *Business Insurance*, spoke these words of warning to the industry—

[667] *Business Insurance*, 13 November 2000, 'Bermuda Market, Exploring the Island's Expertise from tip to tip, Charting Bermuda's History', by Shirley Henry, p. 32, Sources Bermuda Insurance Institute and Business Insurance reporters

[668] *National Underwriter*, 1 July 1996, 'Good Times not over for Bermuda', by John Jennings, pp. 3 & 18

[669] Interview with Roger Scotton, 9 April 2003

'Now to the most talked about business in Bermuda today—Bermuda as home to the monoline catastrophe reinsurance companies. Today, I am hearing the same comments about the cat companies that I heard about the excess liability companies in the mid-1980s—"they will never last, they aren't committed to reinsurance business, they will diversify themselves into bankruptcy". Who, you ask, is uttering these absurd allegations? They are risk managers, insurance company executives and some brokers. Among them are people who would never tell you to your face that they doubted your long-term commitment to the business of insurance or reinsurance,...most of them won't even say it for the record to a *Business Insurance* reporter. They realize they just may need you sometime in the future, so they won't publicly burn their bridges with you.

'But this is my wake up call. You must wake up and realize that your perceptions of Bermuda are not those of others. You are still fighting ignorance and misinformation about what your companies are doing here, about your companies' commitment to the business and the level of professionalism in the business on this island.

'Some of you, I know, are saying "Hogwash!"—-or something less polite. I've heard your position—you contend that your company is an international insurer or reinsurance company that just happens to be based in Bermuda. Your country of domicile is irrelevant, you say, and the world has accepted that. With all due respect, I disagree. There are insanely jealous competitors in New York, London, Zurich and Munich who don't want you to succeed. Even if they can't fulfil all the demands for capacity from insurance or reinsurance buyers, they don't want their customers or prospects doing business with you. You are threats to them.

'As a result, they will use every disparaging word they can to cast doubt on your security. They depict Bermuda as home to companies, and executives, who couldn't make it elsewhere. They seem to contend that unless you fight your way through hordes of traffic, endure winter Nor'easters or driving rain, you are not possibly fit to underwrite insurance and reinsurance.

'On a more substantive basis, the biggest concerns I have heard about Bermuda and continue to hear centre on capitalization—is the money going to last? If the money lasts, will it be around to pay claims, or will its investors take it out?

'The attempt by industry and government here in Bermuda to answer these concerns with amendments to the insurance law has done little to answer these concerns. The announcement of the new regulations, I am sorry to report, was seen as a PR move. And the fact that the amendments have yet to be adopted has done little to dispel the impression that the announcement of the new restrictions on dividends and other requirements was only a PR move.

'In addition to the age-old stigma of doing business in a land of sun, sea and sand, you in Bermuda are facing new challenges. One of them is new competition, to which I alluded earlier during our trip down memory lane. Bermuda, for example, no longer is the immediate domicile of choice for a captive insurance company. Other countries, and states in the United States, have changed their laws and built their infrastructures to well serve captive insurance companies. In the future, I think you will find that there will be increasing competition from companies in the United States and Europe to underwrite the innovative products that you have here.

'Yes, you have the regulatory and tax environment to give you an edge. But the old-line insurance and reinsurance companies elsewhere are struggling for survival. They see your success here and they are going to try and emulate it, not by moving here but by trying to be more responsive to their clients on their home turf. And don't underestimate a buyer's comfort factor in buying insurance or reinsurance from a company that is based in their country, subject to their rules. For goodness' sake, London security has been considered suspicious by some Americans, even before Lloyd's losses hit the headlines.

'Another challenge for Bermuda is dealing with the reports of increasing crime here. I was sent a stack of clippings from *The Royal Gazette* on crimes against tourists visiting the island. You can be sure that reinsurers, as well as captive managers, in other domiciles are circulating those clips to potential clients to convince them that Bermuda is not safe to visit. Never mind that the crimes wouldn't earn a report in a New York newspaper. It startles people to read about crimes against visitors in Bermuda.

'Now that I have jolted you out of your dreams that everyone sees Bermuda as "one market to the world," which those of us on the Bermuda Insurance Symposium Committee thought made a good theme for this year's symposium, I need to deliver on advice more substantive than that of the operator who says, "have a nice day." My advice is four-fold.

'One—don't dismiss what I've said today. Recognize that you still have an image problem in the world.

'Two—keep working at changing that image. To change that image you need first and foremost not to apologize for being based in Bermuda, which is how I read the statement "we are an international company that happens to be based in Bermuda." Through your publications—like Roger Scotton's *Bermuda Update*—you must continue to emphasize why insurance and reinsurance companies are based in Bermuda. You must convince` people that companies are indeed subject to regulation here, it's just not onerous regulation like we have in the United States and to a lesser extent the United Kingdom. Given the current anti-government political sentiment in the United States, such depictions of regulation in Bermuda will be very well received. You must continually promote the professionalism in the industry that works on this island. The Bermuda Insurance Symposium is one excellent forum for this. It's an opportunity to showcase what really is happening here. In addition, I encourage all of you to take every opportunity to participate in seminars and forums around the world, to address gatherings of risk managers, insurers and reinsurers to show them who is doing business here. Don't expect everyone to come here to meet you and find out what you are doing.

'My third piece of advice—don't be defensive when Bermuda or a Bermuda-based company is criticized, but mount a strong offensive. For example, the insurance rating agencies' refusal to award a rating to a company with fewer than five years in business was not directly aimed at Bermuda, but it has been most important to Bermuda-based companies. I applaud those of you who are lobbying the agencies to grant ratings sooner.

'My fourth bit of advice—don't get smug and complacent. Keep innovating. London was once the centre of the insurance universe. You are here because London and other insurance centres did not respond to the needs of their clients. Remember those roots.

'You have to be your own worst critics. You know better than I what needs to be improved on the front lines of the business here, and you know where the voids are in the marketplace that you can fill. You have much to be proud of in Bermuda, as the largest captive insurance company domicile, as home to the innovative excess liability insurance companies, as home to financial—or should I say finite risk—insurance and reinsurance and as home of the monoline catastrophe reinsurers, the industry here is innovative and growing.

'You have little to apologize for. Insurance and reinsurance companies around the globe go broke, fold up shop or get purchased. *Business Insurance* is filled with these reports each week.

'Be proud of yourselves and Bermuda, but don't be lulled to sleep by your success. Wake up and promote your companies and Bermuda every day—every week—to take the wind out of your competitors' sails.'[670]

1995, not such a bad year after all

Despite the softening market in the insurance industry, disasters around the world, the EMLICO scandal, Independence concerns, and friction between the Bermuda government and the international business sector, financially 1995 was an exceptional year for Bermuda's international insurance industry. *The Bermudian* reported on the financial well-being of the island as a direct result of the international insurance companies—

[670] Speech by Kathryn McIntyre to members of Bermuda Insurance Institute, 12 January 1995

'Bermuda's insurance industry grew to extraordinary new levels in the 1995 year of account, according to just released figures by the Bermuda government. By virtually every statistical category, the industry reached record highs in 1995. Highlights include—

'Gross premiums written rose 24 per cent to US $23.4 billion, while net premiums written, which represent the volume of insurance business actually retained by the Bermuda market, grew to US $18.4 billion, compared to US $14.9 billion in 1994, an increase of 23 per cent year over year.

'The Bermuda market's aggregate capital and surplus, a closely-watched number regarded by many as the best statistical guide to the financial strength of the industry, advanced 24 per cent to finish at US $36.9 billion, against US $29.8 billion the year before.

'Total assets registered the largest percentage growth, finishing the year up 25 per cent at US $95 billion.

'Registrar of companies Kymn Astwood says the statistics which are compiled from statutory financial returns filed annually by every insurer, characterised a year that saw 90 new insurance companies added to the Bermuda register. He also points to the continued expansion and diversification strategy of some of Bermuda's large commercial insurers as being a "significant contributing factor to the industry's growth last year."'[671]

After the 31 December 1995 deadline, the time had passed for all companies to reregister under the new Amendment to the Insurance Act of 1995 and for the first time Bermuda was able to determine the true makeup of the companies operating on the island. The new registration process also provided for a uniformity of approach as to how companies would be tracked in Bermuda from that point on. The new process determined the following—

'Approximately 1200 licenses were issued to Bermuda-based insurers in the first re-registration of the Island's insurance industry, providing the first clear picture of the makeup of the Island's insurance industry.

A total of 859 companies representing more than 60 per cent of the register were licensed as either Class 1 or Class 2 captive insurers. Another 254 insurers were licensed as Class 3 companies—a group which includes finite reinsurers, insurers writing direct policies with third-party individuals and captives deriving more than 20 per cent of the net premiums from unrelated risks. Just 15 companies received Class 4 licenses, which are reserved for heavily capitalised excess liability carriers and property catastrophe reinsurers.

Another 74 insurers were registered as long-term or composites, with 42 writing only long-term business, and 32 writing a combination of long-term and Class 1, 2 or 3 business. All except 199 companies received licenses under the new regulatory system by the end of 1995. These unlicensed companies were either still in the process of being registered, or were dormant and did not need to re-register, or were in liquidation or about to enter liquidation.

...There were a record 1401 insurers domiciled in Bermuda at the end of 1995.'[672]

The Independence debate

An Independence referendum was held in August of 1995. Premier Swan had proposed the idea but his United Bermuda Party was split on the subject. The Opposition Progressive Labour Party urged its members to abstain from voting in the referendum because they wanted constitutional changes made prior to voting for Independence.

The night before the referendum Hurricane Felix was brewing out in the Atlantic. Next morning the island was placed under hurricane watch. Felix did little physical damage to the island as it

[671] *Bermudian Business*, Winter 1997, Business Briefs, 'Insurance hits new highs', p. 84

[672] op. cit., Premier Issue, Insurance Special, Spring 1996, 'New class system for insurers', p. 12

brushed by the South Shore but did some psychological damage to the people of Bermuda when it forced the postponement of the referendum for 24 hours. Many in Bermuda saw this as a sign that the referendum was going to be a dividing moment in the history of Bermuda politics—a sign that later proved true because when the referendum was held next day the proposal was rejected by a three-to-one vote. Premier Swan had stated publicly that he would resign if the motion was defeated. He kept his word and promptly resigned.

Swan later said his fight for Independence was not as many believed an ego trip but because he saw Independence as the only way Bermuda could project its own image to the world. Prime Minister Thatcher had told him that Britain would only assist Bermuda when it was compatible with British interests, the implication being that otherwise Bermuda was on its own. As a result he thought it time for Bermuda to end what was in reality but a vestigial connection to Britain and to align itself closely with the United States while it still had very strong US connection. However once he realised to what extent this conviction divided his party he knew he could no longer serve as its leader and concomitantly that he must resign as Premier of Bermuda.

Shortly thereafter the US closed its defence bases. US defence presence in Bermuda had come to an end. Bermuda was on its own in the Atlantic with no allied forces to protect it in the event of war. Could it have been that Swan was trying to pre-empt such a withdrawal by seeking independence from Britain while Bermuda could still register as having some strategic value to the world's only remaining superpower? Or did the very fact that the US was now supreme make that irrelevant? The people of Bermuda will never know the answer because both Swan and Independence were taken off the agenda.

Dr. David Saul became the new Premier. He was to be known as the man who coined the phrase 'Bermuda Inc.', as he set out to strengthen the ties between government and the international business sector. This came not a moment too soon. *Bermudian Business* quoted the *Economic Review* as saying—

> '1994 and 1995 have been periods of protracted adjustment and change in Bermuda's economy… While the international business sector has enjoyed sustained growth, parts of the retail and hospitality industries continued to face challenges…Businesses, workers, unions, and the government all share the responsibility to ensure that they supply their services and products at a price that reflects the market's willingness to pay. The world's economy is becoming increasingly integrated, and Bermuda's tourist and retail market are becoming more exposed to more intensive market forces from which they have historically been sheltered…Bermuda's residents still enjoy an enviable standard of living, but if this is to be maintained, business and labour practices must change to recognise the new economic environment in which they are competing. This is likely to require increased focus on cost-control and reduction. The failure to adapt will cause firms to close down and employees to lose their jobs.'[673]

A sobering message for the economy of Bermuda. Would the Island take heed?

[673] *Bermudian Business*, Premier Issue, Spring 1996, 'Insurers hit new high', p. 74