For Opinion See 2004 WL 1745777, 2004 WL 1459264, 2004 WL 161484, 2003 WL 21688229, 2003 WL 21673934, 2002 WL 1263997, 2001 WL 1268539, 2000 WL 1898518

United States District Court, N.D. Illinois.
TEUSTMARK,
v.
GENERAL.
No. 00-C-1926.
August 12, 2000.

(Transcript)

Name of Expert: James Schacht
Area of Expertise: Insurance >> Underwriter
Case Type: Contracts >> Breach
Case Type: Insurance >> Insurer v. Insurer
Jurisdiction: N.D.Ill.
Representing: Plaintiff

Schacht - direct

(Witness sworn.)

JAMES SCHACHT, PLAINTIFF'S WITNESS, DULY SWORN DIRECT EXAMINATION

BY MR. MULLINS:

Q Good afternoon.

A Good afternoon.

Q Would you please introduce yourself to the court.

A James W. Schacht.

Q Could you spell your last name for the record, please.

A S-c-h-a-c-h-t.

Q Mr. Schacht, have you come to court today prepared to state your expert opinion on the reinsurance industry's custom and practice with respect to promises to reinsure, the setting of reserves and the duty of utmost good faith?

A Yes.

Q What qualifies you to give opinions on these matters, sir?

A Well, I've spent almost 4 0 years now in the insurance industry or its regulation.

Q And where have you spent those 4 0 years?

A I have -- 31 years was spent in insurance regulation and nine years as a consultant to the reinsurance and insurance industry.

Q And when you say you spent 40 years in the industry, that includes both insurance and reinsurance?

A That's correct.

Q And generally what is reinsurance?

A Reinsurance is -- in its simplest form is what an insurance company purchases to protect itself from another insurance company.

Q So both parties to the transaction are insurance companies?

A That's correct.

Q Okay. Is there any particular nomenclature we'll need to know to keep those two companies straight?

A There's a lot of nomenclature that's unique to the reinsurance industry. The insurer that is passing risk to another insurer is called the cedent. The company that's assuming that risk is called the assuming company. And reinsurance companies also purchase reinsurance protection, and the company that passes the reinsurance risk is called a retrocessionaire, and its passes it to another assuming rein-

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surer.

Q And over your 40 years in the industry I think you stated you had experience with reinsurance companies; is that right?

A That's correct.

Q Is that both assuming and ceding companies?

A Yes.

Q When you say you worked in the regulation, who was your employer when you worked in insurance regulation?

A The State of Illinois.

Q Is that the Illinois Department of Insurance?

A That's correct.

Q Generally what does that department do?

A It regulates the insurance industry that does business in the state.

Q Does it regulate the companies at any particular point in their lifespan?

A The regulation is really cradle to grave. It's from incorporation to -- if by chance a company should get into financial difficulty, the department or the director is responsible for dealing with that company that fails.

Q And how does the state Department of Insurance like Illinois interact with federal authorities that regulate insurance?

A Well, it doesn't. Insurance is -- the insurance industry is unique amongst financial institutions in that there's no federal counterpart. All the regulation occurs at the state level.

Q And in your 31 years with the Department of Insurance could you briefly describe some of the titles that you've held?

A Well, I began in 1964 as an examiner and then held several positions in the examination division till the early '70s when I was promoted to being deputy director. And then in 1976 I was appointed chief deputy director, and I held that position until I left in August of 1995. And during that period of time I was the acting director on three different occasions totaling about four years.

Q Okay. Let's start at the beginning. I think you mentioned there were several titles with examiner. What generally did you do as an examiner with the Department of Insurance?

A The department is authorized by law to conduct financial examinations of insurance companies. Particularly back in that period of time it was financial examinations. And it's very similar to an audit that an independent auditing firm would do. And that's what I did. I examined insurance companies.

And I began as part of the examination team, and then I became a leader of the examination team and then responsible for several examination teams and then ultimately became chief examiner.

Q And after becoming chief examiner you became the deputy director for the financial corporate branch of the department; is that right?

A That's correct.

Q And what were your duties as the deputy director?

A The financial corporate branch was responsible for analyzing insurance companies that did business in Illinois, conducting financial examinations, approving transactions like reinsurance, and that was basically it.

Q While you were -- then you became the chief deputy director; is that right?

A Correct.

Q While you were chief deputy director did you

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ever participate in a company's negotiations for reinsurance protection?

A I did.

Q Can you give us some examples of that?

A There was a company here in Illinois by the name of Old Republic that got itself into some difficulty with a book of business, a rather substantial book of business, and the department worked with that company to try to devise a solution to its problems, and the -- reinsurance was decided as the appropriate vehicle primarily because there were some Lloyd syndicates that were willing to take on part of this risk. And executives from Old Republic, myself, representatives of the Lloyd syndicates that were going to assume this risk as well as their outside law firm, Lord, Bissell & Brook, we all sat down in a room and struck a deal with regard to transferring some of this risk to these Lloyd syndicates.

Q Were you in the room when the deal was struck?

A Yes.

Q Was it your understanding that Lloyd's had promised to provide Old Republic with reinsurance protection?

A Yes.

MR. HASSAN: Well, going to get into the details of this --

I'll withdraw the objection.

BY MR. MULLINS:

Q Was it your understanding that Old Republic would rely on the promise for reinsurance protection that Lloyd's had given it?

MR. HASSAN: Well, I'm going to object to this now. We're getting into some transaction that's really far afield from this transaction, and I don't see the relevance and -- or any foundation for him to understand what the mental states were of the Lloyd's or Old Republic.

THE COURT: What's the relevance of this to what we're about here?

MR. MULLINS: The relevance is that the defense has taken issue with Mr. Schacht's credentials, saying that he hasn't participated in reinsurance transactions, so I'm giving the factual background of reinsurance transactions that he has participated in and his understanding of how promises of reinsurance work.

I'm just going to get into the facts of it that he observed, his understandings on a couple of transactions, to lay the foundation to tender him as an expert witness, Your Honor.

THE COURT: I will allow it for the limited purpose of attempting to provide the qualifications to testify as an expert.

MR. MULLINS: Thank you, Your Honor.

THE COURT: For that limited purpose.

BY MR. MULLINS:

Q I'm not sure if I got an answer, Mr. Schacht, so let me reask the question.

Was it your understanding that Old Republic would rely on the promise that Lloyd's made to give it reinsurance protection?

THE COURT: Excuse me one moment. I'm sorry. I think Mr. Hassan also had a second prong to his objection, and that was lack of proper foundation. So I'm going to sustain it on the grounds of proper foundation. You will be provided an opportunity to try to lay the foundation.

MR. MULLINS: Okay.

BY MR. MULLINS:

Q You participated in the meeting where Lloyd's

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promised to give reinsurance protection to Old Republic. Do I have that right?

A That's correct.

Q Why were you at the meeting?

A I was there because of the necessity to conclude a deal as quickly as possible. Everyone knew that the regulators had to approve the deal. It had to be acceptable to the insurance department. And that's why I was there.

Q And the regulators was you; is that right?

A Yes, that's correct.

Q And if the regulators or you hadn't approved the deal, what would have happened to Old Republic?

A It would have had substantial problems. I really -- this was some time ago, 20 years ago, and other than that I can't remember a lot of details.

Q But you do remember that Lloyd's made a promise to reinsure Old Republic?

A Absolutely.

Q Did the department rely on Lloyd's promise that it would reinsure Old Republic?

A Yes.

Q Did Lloyd's keep its promise to provide Old Republic with reinsurance protection?

A Yes.

Q Is the Old Republic transaction the only transaction that you participated in in getting reinsurance protection?

A No.

Q Give us another example.

A The other one that I can recall -- and I think you're going to have to appreciate that I'm now thinking back over 35 years or so when I was a regulator, but another instance is when -- there was a company called United Chambers Insurance Company. It was a -- really an unauthorized insurer, and it was necessary to find a company to front for it, and between the department and United Chambers and Reserve Life of Dallas, Texas we were able to put a reinsurance arrangement together where the programs that United Chambers was doing could go forward.

Q Did you participate in the discussions between United Chambers and Reserve Life to get the reinsurance protection?

A Yes.

Q Was it your understanding that Reserve Life had promised to provide reinsurance protection to United Chambers?

A Yes.

Q Was it your understanding that United Chambers would rely on Reserve Life's promise to --

A Yes.

Q Did the department rely on Reserve Life's promise to give reinsurance protection?

A Absolutely.

Q And did Reserve Life keep its promise to provide the reinsurance protection to United Chambers?

A Yes.

THE COURT: I have a question. Were those promises oral or in writing?

THE WITNESS: They were all oral. When we concluded the meeting we did not have a written document to show the results of the negotiations.

THE COURT: Before you got involved, to your knowledge did jthey have oral or written agreements?

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THE WITNESS: Since there was really -- my involvement was contemporaneous just with the negotiations. Nothing occurred before then.

THE COURT: I see. Okay.

BY MR. MULLINS:

Q Did the department require either Old Republic or United Chambers to get that reinsurance promise in writing?

A I think there was an expectation that when we left that room even though we had this oral promise that eventually it would all be documented in written form, and it in fact was.

Q Was there any time frame in which the department had that that had to occur within?

A No.

Q Do you know how long it took?

A I don't remember.

Q While you were chief deputy director did you take on responsibilities in addition to those that you've described here today?

A Yes. In the mid '80s I became the special deputy receiver, which meant that I was responsible for companies that got into financial difficulty.

Q Can you be more specific on what a special deputy receiver does?

A When an insurance company gets into financial difficulty, the director is appointed receiver. And there are really three

forms of receivership in Illinois and most other states, and that is conservation, rehabilitation, liquidation. And so we had about fifty companies in one of those stages of receivership during the entire time that I was there.

Q And does the special deputy receiver work with those companies' management or step into the shoes of the company's management?

A In the case of rehabilitation, liquidation it's stepping into the shoes of the company's management. In the case of conversation, it's more of an oversight, safeguarding, conserving of assets and safeguarding of books and records, so the receiver does not step in the shoes of management in that case.

Q Did there ever come a time when you personally stepped into the shoes of the CEO and ran one of these companies in receivership?

A Yes.

Q Can you tell us a little bit about that?

A Well, as I said, we had during the entire term that I was the special deputy receiver always about fifty companies in receivership, and I would say the majority of them were either in rehabilitation, liquidation, and so in at least 40, 45 instances I was responsible for running the companies. Even though they were going out of business, there was still a business there to wind down and conduct.

Q And you've told us the distinctions between different types of receiverships, the liquidation, rehabilitation, conservation. Is the goal the same in each, to maximize the company's assets?

A Absolutely.

(Brief recess taken.)

THE COURT: You may continue, counsel.

MR. MULLINS: Thank you, Your Honor.

BY MR. MULLINS:

Q Mr. Schacht, before the break I think we were up to the time when you became acting director of the Department of Insurance. Could you tell us how that came to be? A The first time was in 1982 when the then director resigned and the governor asked me to step in and be the acting director for an un-

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specified period of time, and it wound up being about a year and a half, and then a new director was appointed. Q And you said you were acting director on how many occasions?

A Three.

Q And that's an appointed position; is that right?

A Yes.

Q Appointed by whom?

A The governor.

Q And which governors appointed you on those three occasions?

A The first one in 1982 was Thompson, and the one in '91 was Edgar, and Edgar again in 1994.

Q And were you offered the opportunity to become the permanent director of the Illinois Department of Insurance?

A Yes.

Q Why didn't you accept that lofty title?

A It would have been a decrease in salary.

Q While you were -- could you tell us briefly what your duties were as acting director of the Department of Insurance.

A It was the same as if I was the permanent director. And I was the head of the agency, part of the governor's cabinet, responsible for making public policy decisions with regard to legislation, regulating the insurance industry, enforcing the insurance laws.

Q When you say regulating the insurance industry, while doing that how would the department get involved, if at all, with reinsurance transactions?

A Reinsurance is a significant vital part of the insurance industry, and so almost everything you do as a regulator in one way or another affects reinsurance, reinsurance transactions, the reinsurance industry.

Q Would companies need to get the assent of the Department of Insurance before they could enter into a reinsurance transaction?

A On occasion. Usually in the case of life and health companies it was treaties that were outside of the ordinary course of business. With regard to P&C companies it was a percentage of -- and I don't remember the percentage offhand -- of the amount of reserves or including unearned premium that was being transferred would dictate whether or not it required the department's approval.

Q And you left the Illinois Department in 1995; is that right?

A Yes.

Q And since then you've been with Price Waterhouse Coopers?

A That's correct.

Q Would it offend you if I abbreviated that to PWC?

A Not at all.

Q What were you hired to do at PWC?

A I was hired to start the insurance regulatory practice. When I joined the firm it was known as Coopers & Lybrand. Coopers & Lybrand and Price Waterhouse merged in 1998 and became Price Waterhouse Coopers. So when I joined it was Coopers & Lybrand, and I joined to start an insurance regulatory practice.

Q And what does the insurance regulatory practice do?

A We consult with the insurance-reinsurance industry on regulatory and other matters, help companies get organized, help companies structure reinsurance arrangements, help companies structure in-

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surance products, help companies when they get into financial difficulty, and we also help companies that are thinking of entering the insurance business.

Q During your time at PWC have you ever participated in negotiations designed to get reinsurance protection?

A Yes.

Q Can you tell us a little bit about that?

A Well, the only occasion I can remember at the moment is when there was a revolutionary really insurance product, automobile insurance product that was being created, and it was recognized that we were going to need a company to front this program and we were going to need reinsurance on the back end to protect the company and the program, and I started working on trying to put that reinsurance program together. Unfortunately, we could never find a buyer for this program, so it never really came to fruition, but nevertheless spent a lot of time trying to put it together.

Q In the course of the close to 40 years of experience we've spoken about here, did you come to learn the customs and practices of the reinsurance industry?

A I did.

Q Have you ever been retained as an expert on insurance matters?

A Yes.

Q How many times?

A Did you say insurance or reinsurance?

Q Insurance.

A Insurance, probably 30 times.

Q And of that 30 how many were you retained for your expertise on reinsurance specifically?

A Seven, eight times.

MR. MULLINS: Your Honor, at this time Trustmark would tender Mr. Schacht as an expert on the reinsurance industry's custom and practices with respect to promises to reinsure, the setting of reserves and the duty of utmost good faith.

THE COURT: Do you care to voir dire the witness, counsel?

MR. HASSAN: Yes, Your Honor.

THE COURT: All right.

MR. HASSAN: Well, Your Honor, I think that based on the record thus far I don't think there's been an establishment of qualification. I think he's identified two reinsurance transactions that he witnessed the negotiations of back 20 or 30 years ago, and he was trying to put together a transaction the details of which he did not particularly describe, which was a third transaction. So that's what I counted over the 40 or so years he's been working in this.

I think he probably has regulatory expertise, but in terms of expertise about the custom and practices of the reinsurance business I don't think he's made a showing. He's not said he's ever negotiated a transaction or that he ever worked for an insurance company or that he ever worked for a reinsurance company.

So I object to -- I object to him. I mean -- well, I'll stand on that objection.

MR. MULLINS: Your Honor, he's testified he has 31 years of experience with the Department of Insurance. He testified there are different ways the Illinois Department of Insurance gets involved with reinsurance, that they have to approve some deals, people come to them when they're extraordinary.

He did give just two examples because they were just examples, they weren't exhaustive, of his experience of negotiations he has participated in.

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And as far as working for an insurance company, he testified that he steps into the shoes of the insurance company's CEO and acts as the management of the company.

If Your Honor would like me to lay more foundation I can, but I think what's been laid is sufficient for him to testify as an expert.

MR. HASSAN: Well, I would have thought that if there was going to be someone to testify about reinsurance practice that you would have somebody who was involved in negotiating many deals or somebody who scientifically went in and studied it as a scholar, but there's been no showing of either.

I've watched a lot of major league pitchers over the past 30 years, and I have opinions about them, but I don't believe I'm an expert or qualified to be an expert on the basis of having observed other people do things, Your Honor. And not -- and then also I've not been a scientist in observing that. And I think that he's been retained as an expert witness many times since he's left the public sector, but that -- being retained as an expert doesn't make him an expert, Your Honor.

THE COURT: Well, of course, being an expert -- being qualified as an expert can be done either by way of academic credentials or experience.

I have to acknowledge that the experience -- as I was listening, the experience seems to be somewhat remote from what we're talking about here, but on the other hand --

MR. MULLINS: Your Honor, you're absolutely right that an expert can be qualified on their experience. The standard that Mr. Hassan had in mind is not the standard that's under the federal rules.

This was fully briefed in the motion in limine where we cited numerous cases where general knowledge of the insurance industry was enough to qualify an expert to speak about specific matters within the industry, and that's what we've -- we've tendered Mr. Schacht. I've gone over at a high level his experience. I think it's enough. If you'd like me to go back and lay some more, I can do that, but certainly his 31 years with the Department of Insurance, his unwinding of insurance transactions, his approving them for companies, his participating in the negotiations is more than sufficient under the federal rules.

THE COURT: I think counsel is right, Mr. Hassan. I think there's probably been sufficient testimony developed for purposes of allowing him to testify as an expert, and the rest of it goes to the weight to be accorded to what he testifies to as opposed to its admissibility. So because -- because it's very clear that the federal rules do allow for one to be testified on the basis of experience, so I'm going to allow him to testify as an expert, and, like I said, it goes to the weight to be afforded.

MR. HASSAN: Very well.

MR. MULLINS: Thank you, Your Honor.

BY MR. MULLINS:

Q Mr. Schacht, earlier you gave us a general overview of reinsurance. Can any type of insurance product be reinsured?

A Yes.

Q Are there certain overarching customs and practices of the reinsurance industry that apply regardless of the type of product being reinsured?

A Yes.

Q And are there also different types of reinsurance arrangements? A Yes. Q Could you describe those for us, please?

A Basically there's two types. There's one that's called facultative and another that is called obligatory.

THE COURT: I'm sorry. What was the first one called?

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THE WITNESS: Facultative.

THE COURT: Facultative.

BY THE WITNESS:

A With regard to the first one, facultative, it does not become effective until the reinsurer definitively accepts the risk. With regard to obligatory arrangements, which would include quota share and other types, it becomes effective when the parties reach an understanding as to terms, which was the case here. BY MR. MULLINS:

Q And do you have an opinion about whether promises to provide reinsurance are binding under the custom and practice of the reinsurance industry?

MR. HASSAN: Well, I'm going to object as to his opinion as to whether something is binding. That is asking for a legal opinion.

MR. MULLINS: I specifically prefaced binding under the custom and practice of the industry. He's not a lawyer. He's not pretending to give a legal opinion, Your Honor.

THE COURT: But you're asking for a legal conclusion.

MR. MULLINS: I didn't mean to. I was asking whether customarily companies would consider it binding, not whether a court of law would consider it binding.

I can reask the question.

THE COURT: I'll sustain the objection.

BY MR. MULLINS:

Q Mr. Schacht, do you have an opinion as to how companies view promises to provide reinsurance protection?

A They view them as binding.

Q And is this opinion based on your years in the industry?

A Yes, and regulation.

Q Do you have any specific instances where you came across promises to provide reinsurance protection that you treated as binding?

A There were numerous ones, particularly in the time I spent as a receiver. One instance was a company here in Chicago called Maine Insurance Company, which was a small substandard automobile insurance company that actually became a participant in the international reinsurance market. And when we got involved with that company as receiver we saw numerous reinsurance arrangements where there wasn't any written evidence, there was a lot of -- other than accounts that had been tendered back and forth, and we never doubted that those were legitimate reinsurance transactions.

And another instance was --

Q Let me show you now -- ask you a couple of questions about Maine Insurance Company and then I'll ask you for another instance.

We mentioned earlier that there are two companies to a reinsurance transaction, the ceding company and the assuming company. You remember that?

A Yes.

Q Was Maine Insurance Company the ceding company that was seeking the protection or the assuming company providing the insurance protection?

A No. It was the assuming company.

Q And how many of these oral contracts were at issue?

A At least 20.

Q And when you took over you say the company -- Maine was in receivership at the time? A In rehabilitation.

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Q Rehabilitation.

Was one of the goals when you took over to maximize Maine Insurance Company's assets?

A Yes.

Q And these reinsurance -- oral reinsurance agreements that Maine had, were they making money on those or losing money?

A Most were losing propositions.

Q So did you take the position that you would not honor those oral agreements in order to maximize the company's assets?

A We did not.

Q Why not?

A Based upon what we saw, we felt that Maine was bound to those reinsurance arrangements, and there was no indication that they weren't. The management of the company certainly felt that they were, and so we considered them as arrangements that we were bound to as receiver.

Q And I think you said these were international reinsurance transactions. Were these with the London market?

A This was -- this was business that Maine Insurance Company had become involved in in what was then known as the London fringe market, and these were pools, for lack of a better word, that existed, different brokers had set up and Maine became participants in.

Q And Maine had promised to provide reinsurance protection to these pools?

A Yes.

Q And did they foresee that the pools would rely on their promise?

MR. HASSAN: Objection as to what Maine foresaw.

THE COURT: Sustained.

BY MR. MULLINS:

Q Did you have an understanding when you took over as the receiver of Maine that these pools were relying on Maine's promise to provide the insurance protection?

MR. HASSAN: Same objection.

THE COURT: The objection is sustained.

MR. MULLINS: Thank you.

THE COURT: I'd like to have the witness step out for a moment. You can go back there if you'd like, or you can go out the front door.

(Witness leaves the courtroom.)

THE COURT: I'm having a change of heart about allowing this testimony as expert testimony. I frankly see nothing expert about it as I sit here and listen to what this individual --

Number one, his purpose as a regulator is totally different from what is involved in this particular situation where there is allegedly some writing that indicates that the issues here were not bound -- were not binding unless and until there had been a signing of the document. And based on what this gentleman is testifying to, it just appears that it was kind of a seat of the pants type based on the effort to rehabilitate or help an ailing insurance company based upon some oral discussions that had been had. There's nothing to indicate that there's anything similar to what has taken place in this particular case.

I frankly am having some real concerns about allowing him to testify as an expert.

MR. MULLINS: If I may respond.

THE COURT: You may respond, sure.

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MR. MULLINS: The writing that you refer to, the binding letter of intent, is between Hartford and Trustmark, but what Mr. Schacht is going to testify to and has been testifying to is the reinsurance promises between Cologne and Trustmark. When he stepped into these companies as receiver, he was running these companies. He was trying to get his arms around the contracts and decide what to do with them. That's what he's tasked to do as a regulator. And what he's testified to was Maine Insurance Company had made promises to the London market to provide reinsurance protection. We don't know what they were reinsuring. We don't know whether there was a binding letter of intent on the underlying agreement or not, and that's not what he's going to talk about, and that's not what I'm going to ask him about. What he's talking about is the relationship between the reinsurance parties, which in this case would be Cologne and Trustmark, and he's going to testify that once a company says -- gives you a promise that they're going to reinsure you such as Cologne promised Trustmark as we allege in this case under promissory estoppel that that is a -- that's a promise that companies rely on. The custom and practice in the industry is that the company making it will foresee that companies will rely on it and that the company that does rely on it is reasonable in doing so because that's how the context of the relationship works on the reinsurance level regardless of what happens with Hartford and Trustmark or other acquiring companies that they went after.

There's two layers to this relationship, Your Honor. There's the target companies that they're trying to acquire, and there's the reinsurance parties. And what Mr. Schacht will testify to if he's allowed to come back is that the reinsurance parties oftentimes make broad promises to each other that are binding, and then they go out and they make more specific promises to the acquiring companies, and that becomes the subject business. But he's only going to talk to the level up here, not the level where the binding letter of intent is in the acquiring companies.

MR. HASSAN: Your Honor, the fact issue here is what the expectation of the parties were. There is a rich record here as to what that expectation is by the testimony from Trustmark's people, from Cologne's people. That's what's going to drive Your Honor's decision, not anecdotal evidence. I don't think it would be persuasive to have anecdotal evidence of an insurance regulator.

As to that particular transaction that he was talking about, I heard him say that it was oral but there was performance. There was payments made and honored that suggested that there was an agreement that had actually been entered into. That's what he said in his testimony, in his deposition testimony, and that's what he briefly alluded to here.

We can get into how each one of his experiences may or may not be like this, but I don't think that's going to help Your Honor resolve the issue in this case. I think it's the evidence in this case that will and not the custom and practice to the extent that he knows it, which I don't believe he does.

MR. MULLINS: There will be a factual record in this case of who said what to whom. The custom and practice of the reinsurance industry is the context in which Your Honor needs to fit those facts. We've cited case after case in the motion in limine that you need to know the context of the industry. And this speaks to the two -- the prong of the promissory estoppel that says Trustmark was reasonable in relying on the facts of all the other witnesses that you will hear and that Cologne knew, they could foresee that Trustmark would rely on this because that's how it's done in the industry. Without the context of how it's done in the industry the facts are meaningless. This isn't anecdotal evidence. This is the proper background in which to view it.

THE COURT: I will let you develop your record, counsel. I can assure you I will do substantial research into the issue, and it's subject to being stricken, but since your witness is on the stand I will allow you to go ahead and develop your re-

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cord.

MR. MULLINS: Thank you, Your Honor.

THE COURT: So you may call him back.

(Witness resumes the stand.)

THE COURT: You may continue, counsel.

BY MR. MULLINS:

Q Mr. Schacht, when you left I think we had just finished up with the Maine Insurance Company example, and you had another one on the tip of your tongue and I had cut you off. Did you have another example of your involvement with promises to provide reinsurance protection?

A Another one was Kenilworth Insurance Company.

Q Can you tell us a little bit about that?

A Not that dissimilar from Maine Insurance Company. Another Chicago substandard automobile insurance company that got involved in the international reinsurance market through a London broker and a number of undocumented reinsurance arrangements, and the only evidence was accounts that had been tendered to Kenilworth from, again, there was a broker pool. And as receiver we had to sort out that arrangement. Actually there was arrangements. There were several arrangements. Q Kenilworth was the assuming company in that example? A Yes, yes.

Q So they had made a promise to someone to provide reinsurance protection?

A Correct.

Q And when you stepped in as receiver did you need to make a decision whether to honor that promise or not?

A Yes.

Q And what decision did you make?

A Again, it was a very similar situation. The company's management considered itself bound to these treaties. There was nothing to indicate any reason to dispute that a valid reinsurance arrangement didn't exist, and so we honored them.

Q Despite what the management of the company thought, was there a custom and practice in the industry that you were aware of that would dictate whether that promise be kept?

A The custom and practice is that oral arrange -- or oral arrangements or understanding or promises constituting -- do constitute binding arrangements. That's the way the business has been conducted historically. It's been referred to as a handshake business, an honorable undertaking business, those sorts of references that mean that oral promises are binding.

Q And if Cologne had promised to provide reinsurance protection to Trustmark in this case, would Trustmark in your opinion under the reinsurance custom and practice have been reasonable in relying on that promise?

A Yes.

Q And under the reinsurance custom and practice would it -- is it your opinion that it would be foreseeable to Cologne that Trustmark would rely on that promise?

A Yes.

Q Mr. Schacht, you provided us with your general opinion on promises to provide reinsurance. Did you come to a specific

opinion in this case as to whether there was a promise fromCologne to provide reinsurance protection to Trustmark?

A I did.

Q And how did you come by that opinion?

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A Examining several documents that I believe provided evidence that there was a binding reinsurance agreement even though it had not been reduced to writing. In this particular case with the issue in question, the Hartford business, Trustmark had --

MR. HASSAN: Excuse me. I don't --

THE COURT: Go ahead.

MR. HASSAN: I think he's answering a question that hasn't been answered. I would like to know what he looked at.

MR. MULLINS: That's what I think he was about to say. I asked him what the basis of his opinion was, and I think he was beginning his answer on what the basis is.

THE COURT: I believe that it appears that he was about to respond.

MR. HASSAN: Okay.

THE COURT: In any event, Mr. Hassan, unfortunately it's not your objection to complain about a nonresponsive answer. It's only the proponent of the question.

MR. HASSAN: Very well.

THE COURT: All right.

BY MR. MULLINS:

Q Mr. Schacht, I believe you were explaining the basis of your opinion that there was a promise from Cologne to Trustmark; is that correct?

A Yes.

Q Okay. Could you please provide us the basis from which you came to that opinion?

A Well, Trustmark had issued or executed a binding agreement with Hartford in October of 1998. Previously Cologne had commented upon that letter of intent. Mr. Perkins in his deposition that I read stated that he knew that Trustmark was going to rely on Cologne for reinsurance protection. Mr. Perkins wrote a letter in -- I think it was in 1998 to the Lincoln National Corporation which set forth the essence of the reinsurance arrangement between Trustmark and Cologne.

And then there was another letter that I looked at which was from John Hewitt & Associates that related to specifically the Hartford Life book of business, and that letter I think was noteworthy for two aspects. One is, is that it kept referring to our offer, our agreement, our understanding, and that letter was I think dated August 26th, 1999. And then that was followed by Mr. Perkins' letter of September 3rd of 1999, one week later, when Mr. Perkins repudiates or rescinds the reinsurance arrangement on the reasons that he sets forth in the letter.

So putting all those things together, it was my

opinion that there was an oral agreement, oral promise from Cologne to Trustmark to reinsure Trustmark on the Hartford book of business.

Q You mentioned that you read Mr. Perkins' deposition in which he said that he knew Trustmark was going to rely on the reinsurance protection when they signed the letter of intent. Do I have that right?

MR. HASSAN: Well, you've just misstated his testimony, and so I object to that.

THE COURT: I'll sustain the objection to the statement. It's your witness, and he's already testified. There's no need to repeat the testimony whether he repeated it correctly or not.

You may proceed with another question.

BY MR. MULLINS:

Q Mr. Schacht, where did you come by your opinion that Mr. Perkins knew Trustmark would rely on this promise?

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A In Mr. Perkins' deposition.

Q Did you consider it unusual that Mr. Perkins would expect Trustmark to rely on its promise?

A No.

Q Is that consistent with your view of the custom and practice in the industry?

A Yes.

Q You referred to a letter, and let me -- I don't think I've put a binder in front of you yet, but let me hand out some exhibits.

Mr. Schacht, I think you mentioned that you -- let me show you what has been marked as Plaintiff's Exhibit No. 1. Is this the letter you referred to that you saw from Mr. Perkins in September of 1999?

A It is.

Q And there's a section -- if you can blow that last section up there.

Mr. Perkins states, “The conditions of the letter of intent are not met, and we are forced to conclude that no agreement is in effect.” Do you see that?

A Yes.

Q If one of the parties to a reinsurance promise was to conclude that the conditions of the promise had not been met, is there any custom and practice in the industry as to how thai dispute would be worked out?

A It's certainly not worked out in this fashion, through rescinding or attempting to rescind or repudiate the arrangement. It would have been resolved through negotiation, discussion.

Q Is there any particular nomenclature in the industry for how those discussions would take place?

That was a poor question. Let me try it again. Is there a.duty upon the companies under the custom and practice of the industry to engage in those type of discussions?

A Yes, there's a -- certainly a duty of good faith. In fact, it's referred to as utmost good faith. And this is not utmost good faith.

Q And once a reinsurance promise is given, can both parties -- is it reasonable for both parties to assume that the other party will rely or act in utmost good faith?

A Yes.

Q Do you have an opinion, Mr. Schacht, if a reinsurer had never promised to provide a company with reinsurance protection would there be any reason for them to establish a reserve for losses?

A By losses you mean underwriting losses?

Q Yes.

A There would be no reason.

Q And why don't we back up and describe for me what -- other than underwriting losses what other type of losses could there be?

A There's -- well, deal with the first one. Underwriting losses are losses that emanate from the insurer or reinsurer's business, in this case insurance or reinsurance business. As any other corporation, it can have losses resulting from other activities, just business activities. So there's a distinction between underwriting losses, those losses that emanate from its insurance and reinsurance operations, and losses that emanate from other things related to its business. Q So there's losses on the risk management side of the business and there's losses just in the ordinary course of doing business? A That's correct.

Q And can reserves be established for both of those things?

A Yes.

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Q And what is the custom and practice in the reinsurance industry with respect to establishing loss reserves or underwriting reserves?

A The law requires you to establish them, and the statute sets forth a number of requirements for those reserves depending upon the type of business that's involved. In this case when we're talking about disability business there is actuarial tables that are required to be followed.

Q Well, if a company had never -- a reinsurance company had never promised to provide reinsurance protection on a particular book of business, would there be any reason for them to establish an underwriting reserve?

A No.

Q Did you come to an opinion in this case as to whether Cologne had established an underwriting reserve for the Hartford book of business?

MR. HASSAN: Objection. Well, no. Go ahead. Go ahead. Go ahead.

BY THE WITNESS:

A I did.

THE COURT: Are you withdrawing the objection?

MR. HASSAN: I'm withdrawing the objection.

THE COURT: All right.

BY MR. MULLINS:

Q You did, sir?

A I did.

Q And how did you come to that opinion?

A There was a couple of reports that I looked at that had been prepared by Tillinghast, Nelson & Warren, I think one dated in July of '99, another in October of 1999, and in both instances Tillinghast recommended the establishment of an underwriting reserve for this reinsurance agreement that had been consummated between Trustmark and Cologne.

Q Let me show you what's been marked as Plaintiff's Exhibit 43 in your book. Is this the report that you were referring to?

A That is one of them, yes.

Q And this is a group exhibit here.

If you could go to the third page, Mr. Johnson.

This one is dated July 14th, 1999. Is this one of the Tillinghast reports that you look at, sir?

A That is the other one.

Q And if we can go to the next page or maybe split the scree: there.

What was it in this report that you found important,

Mr. Schacht?

A I think it's -- what I found interesting is that it supports what I was saying earlier with regard to whether or not there was a binding reinsurance relationship between Trustmark and Cologne in that Tillinghast with respect to the Hartford block says that Cologne is a fifty percent retrocessionaire from Trustmark, Trustmark has the other fifty percent, the reinsurance contracts are not yet signed. That didn't seem to bother Tillinghast, didn't bother me. And it appears that there's a two million dollar loss that has been developed at least through March 31st, 1999, and Tillinghast recommends posting a underwriting reserve for that two million dollar loss.

Q Is it unusual that Tillinghast -- well, strike that.

Is it unusual for a reinsurance company to set up a loss reserve even though there's no reinsurance contract signed?

A Not at all.

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Q And then if you look behind to the next page, Mr. Johnson, part of this group exhibit as it was produced is some -- looks like financial tables. Did you also examine these tables?

A I did.

Q And if you could blow that up, please, Mr. Johnson.

It says here that there was -- there's a two million dollar entry under ALR. Do you have any idea what ALR stands for?

A This table doesn't tell us, but I think it must mean active life reserve, and the reason I say that --

MR. HASSAN: Well, I'm going to object. He's just speculating as to what Tillinghast might mean in -- or Cologne might mean in these documents, and I'm not certain there's any foundation for his speculation, Your Honor.

MR. MULLINS: I asked for his understanding, Your Honor.

THE COURT: The objection is sustained.

MR. MULLINS: Thank you.

BY MR. MULLINS:

Q Mr. Schacht, this two million dollar entry is next to a company called Provident Life and Accident. Do you have any idea why that is so?

A I don't know why it's so, but my understanding is is that that is the Trustmark business.

Q And how did you come by that --

MR. HASSAN: I'm going to object.

THE COURT: I'll sustain the objection.

MR. HASSAN: Thank you.

THE COURT: The answer will be stricken.

BY MR. MULLINS:

Q Mr. Schacht, what is an active life reserve?

Mr. Schacht, what is an active life reserve? A An active life reserve is a reserve that the statutes require insurance companies to establish for those individuals that are not yet on claim or are not yet disabled but may become disabled in the future.

Q Is there a common abbreviation for active life reserve?

A ALR.

Q Did you read any of Mr. Perkins' deposition in preparing for your testimony today?

A Yes.

Q Did you see any mention of Provident Life and Accident in Mr. Perkins' deposition?

A Yes. That's what I was going to get to earlier, that when I looked at Mr. Perkins' deposition, this is explained. Apparently for some reason internally in the records of Cologne Life Re they used Provident Life and Accident for the Trustmark book of business.

Q So it's your understanding that this two million dollars reserve was set up on the Trustmark business; is that right?

A That's correct.

Q There was another part of this group exhibit, the first page, Mr. Johnson, that was dated October 12th -- October 15th, I'm sorry, of 1999. Did you also review these pages?

A I did.

Q Did you find anything interesting about the Tillinghast entries in this page?

A Many of the same notations that were on the July report with regard to the fact that there still are not

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signed reinsurance contracts.

MR. HASSAN: Excuse me. I'm sorry. I should have objected. I object to the form of the question.

THE COURT: I'll sustain the objection to the form of the question.

BY MR. MULLINS:

Q Mr. Schacht, did you notice any differences between these October entries and the July entries that you reviewed?

MR. HASSAN: Your Honor, I would also say this is a -- an assessment made in October after the parties were at loggerheads and litigation was threatened.

MR. MULLINS: Is this an objection or testimony, Your Honor?

MR. HASSAN: So I object to the relevance of this as the basis for some expert opinion. You can see it's dated October 15# 1999.

MR. MULLINS: Your Honor, there's no doubt that this is dated October 15th, and that's after Cologne walked away from the deal in September, but under promissory estoppel case law you're able to look both at the actions of parties after the promise and after the breach of the promise as well as before to establish that there was a promise. So although it's after they walked away from the deal, it is still highly relevant to the issues before the court.

MR. HASSAN: Well, Your Honor, this is a question of establishing a reserve after litigation has been threatened.

THE COURT: Val, would you please read the question back.

(Question read.)

THE COURT: I will allow him to answer. It likewise goes to the weight of his testimony, but I will allow it.

MR. MULLINS: Thank you, Your Honor.

BY MR. MULLINS:

Q Mr. Schacht, did you notice any differences between Tillinghast's October entry and its July entry?

A Yes. One of them is the line that says that J&H audit indicates questionable claims management and other practices by Hartford and Trustmark. Report indicates opportunity for claim rescission, termination, settlement, et cetera. And GCL is seeking to rescind its participation in the deal. If these efforts are successful, the two million dollar reserve will be unnecessary. That is the major difference between this one and the one in July.

Q And did it -- does it appear that the JH&A audit report affected Tillinghast's suggestion that a two million dollar reserve be posted?

A No.

Q And at the bottom where it says GCL, who do you understand that to refer to?

A That's Cologne Re.

Q Is seeking to rescind its participation in this deal, what did you take that to mean?

MR. HASSAN: Objection.

THE COURT: I'll sustain the objection. It speaks for itself.

BY MR. MULLINS:

Q Mr. Schacht, is rescind a term that's used in the reinsurance industry?

A Yes.

Q And does it have a commonly understood meaning?

A Terminate, cancel, end.

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Q Can you terminate, cancel or end something that doesn't exist?

A No.

MR. MULLINS: No further questions.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. HASSAN:

Q Mr. Schacht, I heard you, and I wrote this down, that you said you looked at some testimony from Mr. Perkins, some deposition testimony where he testified that Trustmark -- that he knew that Trustmark was going to rely on his promise when they signed the letter of intent. Do you recall --

A Yes.

Q -- saying that?

A Yes.

Q Do you recall that Mr. -- that the testimony that you read that Mr. Perkins actually said those words, that he knew Trustmark was going to rely on his promise?

A I can't recall if those were the exact words, but certainly that was the -- what I took from the words that he used.

Q So, in other words, that's your interpretation of his testimony; is that correct?

A That's correct.

Q Right.

So when you suggested that that's what he said, that was just your interpretation of what he said; you weren't telling the court under oath that that is what Mr. Perkins said in his deposition, are you?

A I wasn't there. All I can do is read --

THE COURT: Just answer the question, sir.

THE WITNESS: I -- you're correct. I mean, that's what I took --

MR. HASSAN: Thank you, sir.

THE WITNESS: -- From reading his deposition.

MR. HASSAN: Thank you.

And, Mr. Burt, you will stipulate that Mr. Perkins did not say in his deposition that he knew that Trustmark was going to rely on his promise.

MR. BURT: Mr. Hassan, I'm sure the court would object to him contacting me and asking me to stipulate to something. I know what the record says, and the record speaks for itself.

THE COURT: I think he simply wanted to know did you agree that it's not set forth in that --

MR. BURT: I won't stipulate to that at all. If he wants me to look at it at a break I'll be glad to.

THE COURT: Okay.

MR. HASSAN: Well, it might lengthen the -- there was three days of a deposition, and I don't believe it was in there, and we can --

THE COURT: Maybe, counsel, you can just work it out. You could point out where it's set forth in the transcript. I'm sure Mr. Burt in good faith will do the right thing. BY MR. HASSAN:

Q Mr. Schacht, have you ever worked for an insurance company?

A The only reason I'm hesitating is because when I was a receiver I worked for an insurance company because I was paid by those insurance companies that were in receivership.

Q Aside from your duties as a receiver, have you ever been employed by an insurance company, as an employee?

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A No.

Q Have you ever been employed by a reinsurance company?

A No.

Q And I believe you testified that back 20, 30 years ago there were two different transactions that you were involved in where you participated where there was some discussion -- strike that -- there was some negotiation of a reinsurance agreement; is that correct?

A I would not characterize it in that fashion. There was actually a deal struck that day that I was there that I witnessed and participated in.

Q Two transactions; is that correct?

A Two that I could recall.

Q And you participated as a regulator; is that correct?

A That's why I was there, yes.

Q And in those transactions the parties struck a deal, and then they entered into a written agreement that memorialized that transaction; is that correct?

A Substantial time later, months, I think, later.

Q Months? Do you know how long later?

A I don't recall, but I -- I know in the one case it was months.

Q You needed to have a written agreement, though, for regulatory purposes, isn't that correct, ultimately?

A That's not correct.

Q Now, when you -- you mentioned two other transactions that as a receiver you were familiar with. One was the Maine transaction where there was an oral agreement, correct? That's what you said?

A Yes.

Q And in that transaction there was -- there had -- by the time you got involved in it --

This was an insolvent company; is that correct?

A That determination had not been made, but there was certainly substantial questions about its solvency.

Q And in that transaction what you discovered is that there had been actual performance by the parties under this agreement; isn't that right?

A There had been accounts tendered, yes.

Q And “accounts tendered” you mean premiums paid and losses paid?

A There -- I can't say that there was money that changed hands because there was a lot of -- the broker was doing a lot of net accounting. Q Yes.

A And but certainly there were accounts that showed Kenilworth's or Maine's position.

Q Well, in both instances there were accounts that showed premiums being credited and losses being paid; isn't that correct?

A Yes.

Q And in one of these transactions, I believe the Kenilworth, you decided not to enforce the arrangement; isn't that right?

A Did I say that today? Is that what you're saying?

Q Well, I'm asking you the fact. Did you in connection with the Kenilworth transaction decide based on the information that you had that you weren't going to try to enforce the agreement?

A There was one relationship that when I spoke to the broker in London didn't -- he didn't seem to know much about, and we decided not to enforce that relationship.

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Q And you had no writing; is that correct?

A There was no -- not in any of these there wasn't any writing.

Q And that's it? Those are the four transactions that you've had some familiarity with firsthand; is that correct?

A Those are the ones that I can recall thinking back through my regulatory days.

Q Now, you were an examiner for the insurance company -- for the insurance department; isn't that right?

A Correct.

Q And you would see companies, what we'd call ceding companies who'd take credit for reinsurance; isn't that correct?

A That's correct.

Q They show the reinsurance agreement as reflected on their books; is that right?

A Yes.

Q And they show it as an asset; it enhances the financial position of the company; isn't that right?

A Yes.

Q And when you -- as an examiner one of your jobs is to go to see whether there's -- there are insurance agreements in place, isn't that right, as set forth on the annual statement?

A Yes.

Q And you ask the company for these agreements; isn't that right?

A We may, yes.

Q Well, if you're doing your job you want to substantiate the -- that they have validly put a credit, you would ask for those agreements, wouldn't you?

A But as I said earlier --

Q Sir, would you --

A I have forgotten the question.

MR. HASSAN: Miss Reporter, would you read the question, please.

(Question read.)

BY THE WITNESS:

A Yes.

BY MR. HASSAN:

Q And if a company says, “Well, there's nothing -- we have no written agreement,” would you allow that company to take credit for it on its books?

A The ceding company.

Q Yes.

A Says we have no written agreement.

Q “We have no written reinsurance agreement where we're taking credit for it.” Would you allow them -.- as an insurance regulator for the State of Illinois, would you allow them to take reinsurance credit without a written agreement that substantiated their claim?

MR. MULLINS: I object, Your Honor.

THE COURT: What is your objection?

MR. MULLINS: He was tendered as an expert as to reinsurance custom and practice, and now he's being asked questions about statutory accounting principles. It's outside of the area of expertise that he was tendered on. It's outside of the questions that he was asked on direct.

THE COURT: Overruled.

THE WITNESS: Can I hear the question again?

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THE COURT: Val, would you mind reading the question back.

(Question read.)

BY THE WITNESS:

A Yes.

BY MR. HASSAN:

Q Just on the basis of -- you would -- strike that.

Would you make any further inquiry? A We may.

Q In other words, it's your testimony that in the state of Illinois if a financial examiner is told by the ceding company that they don't have any written agreement you would still allow them to take reinsurance credit without any further inquiry?

MR. MULLINS: Is he talking about today or during the 31 years that Mr. Schacht was at the department? He wasn't tendered as an expert to look into statutory accounting principles today. If Your Honor is going to let him ask questions about his experience, then we should narrow the time frame to that experience.

THE COURT: Well, then maybe I shouldn't have let it in about 30 years ago since that may not be relevant today.

This is cross examination. I think he has -- he has the right to examine this witness to determine what, if any, lack of expertise exists. I'm going to allow the question. The objection is overruled.

Do you recall the question, sir?

THE WITNESS: Yes.

And my answer is that yes, we would.

BY MR. HASSAN:

Q And is that your understanding that as of the law today that if a ceding company puts on its balance sheet, on its -- excuse me, on its annual statement it records a contract with a reinsurer and the examiner examines the contract -- examines the entry and asks for the written contract and they say no, that that's the end of the inquiry, that they will allow the ceding company to take that reserve credit?

A I believe that today there is a requirement that the department has established that requires a written agreement in order for a reserve credit to be taken. You were asking me when I was an examiner, and that regulation didn't exist.

Q Okay. But as of today there is that requirement; is that correct?

A Again, I did not -- that's my recollection. I did not go back and research that.

Q And was that requirement put in effect while you were acting director of insurance?

A I don't recall.

Q Was it put in effect in the early '90s?

A Early to mid '90s, I don't recall.

Q Okay. So it's been in effect since at least 1995; is that your testimony?

A Could have been, yes.

Q And it is in effect now; is that correct?

A I believe that's true.

Q Now, simply because a company posts a reserve on its books doesn't mean that the company believes that the liability-reflected by that reserves is a valid obligation; isn't that true?

A All I know is what Tillinghast recommended. I did not trace it through to Cologne's financial statements.

Q You understand -- well, would you answer my

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question though, sir, as to what --

MR. HASSAN: Your Honor, I move to strike the answer.

THE COURT: It will be stricken. It was nonresponsive.

Would you like to have the question repeated?

THE WITNESS: Yes, yes.

THE COURT: Do you want to repeat it# Mr. Hassan, or do you want to maybe rephrase it? Maybe he didn't understand it.

MR. HASSAN: I'll repeat. BY MR. HASSAN:

Q Simply because a company posts a reserve liability on its books does not mean that the company believes that the obligation underlying that liability is a valid one, doesn't it?

A It may not.

Q You would have to know more about the facts and circumstances of why the company posted that reserve in order to understand what its significance is; isn't that correct?

A Yes.

MR. HASSAN: That's all I have. Thank you.

THE COURT: Redirect, counsel?

REDIRECT EXAMINATION

BY MR. MULLINS:

Q Mr. Schacht, you were asked a few questions about credit for reinsurance. Is that an issue you were retained to speak on today?

A It was not.

Q Is that an issue you've studied in preparation for preparing your report or your testimony today?

A It was not.

Q Would the existence or nonexistence of an Illinois Department of Insurance regulation regarding the reporting of reinsurance credit in any way affect the customs and practices that reinsurance companies operate under in the market?

A It would not.

Q You were asked a question a moment ago about setting of reserves and whether it would have to be a valid liability in order to set reserves. Do you remember those questions?

A Yes.

Q Is there distinction between liability under a known agreement and the existence of an agreement at all?

A Yes, there is a distinction. Q Okay. And is there any reason why a company would set up a loss reserve for a policy or an agreement that they claimed they never issued or never entered into? A Not that I can think of.

MR. MULLINS: Mr. Johnson, can you pull up Mr. Perkins' deposition, January 2nd, page 387 and 388.

BY MR. MULLINS:

Q You mentioned you looked at Mr. Perkins' deposition; is that correct, Mr. Schacht?

A Yes.

Q This is a section. I want to see if this is the one you looked at.

””Question: What I was asking you, did you have an understanding that Trustmark believed that Cologne was going to accept fifty percent of the risk at the time this document, the letter of intent, was executed?”

And there's a series of objections by counsel. And the answer is:

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“If I understand the question, the answer is yes.”

Have you read that portion of the deposition before?

A That's exactly what I was referring to.

MR. MULLINS: No further questions.

THE COURT: Recross, Mr. Hassan? RECROSS EXAMINATION

BY MR. HASSAN:

Q Mr. Schacht, you then mischaracterized his testimony; isn't

that right?

MR. MULLINS: Objection. That's argumentative, Your Honor.

MR. HASSAN: I'll withdraw it.

THE COURT: I'll sustain the objection.

MR. HASSAN: I'll withdraw it. I'll withdraw it.

THE COURT: Anything else?

MR. HASSAN: No.

THE COURT: You may step down, sir.

I'm sorry. Did you have anything, counsel?

MR. MULLINS: Nothing further, Your Honor.

THE COURT: You may step down, sir. (Witness excused.)

THE COURT: Do you have another witness?

MR. BURT: We do have another witness today. We have three today. We have another one in the courtroom now if you'd like me to call --

THE COURT: Is that witness going to be very lengthy?

MR. BURT: It is -- it could -- it probably would run past 5:30 with cross, but I don't know. There's a chance we could finish by six if you want to proceed. If not, I could check to see his availability for tomorrow morning.

THE COURT: Why don't you check and see what his availability is. I've been informed that I have no motions tomorrow.

MR. BURT: Oh.

THE COURT: I do have three pleas, but that could probably be done during the lunch break or something. So if he's available, I'd prefer that we just get him in in the morning. We could start again at 9:00 o'clock.

MR. BURT: If you'll give me one moment, Your Honor.

THE COURT: Go ahead. I'll wait.

MR. BURT: I don't even have to go beyond turning around. He said he's available tomorrow morning.

THE COURT: Okay. Fine. Why don't we start then at 9:00 o'clock tomorrow morning. And we should be able to go right through to -- we'll be able to go right through to 11:30, and maybe what I'll do is we'll take an early lunch. We'll consider that the lunch, and so 11:30, and we'll just proceed, and maybe we can come to an understanding today we can work until six if that's necessary.

MR. HASSAN: Your Honor, I think and I hope that Mr. Burt intends to rest tomorrow at some point.

MR. BURT: I've been trying, yes. It is our intent that we will have all of our witnesses done probably early afternoon.

THE COURT: Tomorrow?

MR. BURT: Yes.

THE COURT: Okay.

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MR. HASSAN: Then what we intend to do is to call two witnesses that I think would be fairly short. I would try to get them in, so tomorrow would be a fairly lengthy day, but --

THE COURT: Okay.

MR. BURT: From what I'm hearing from Mr. Hassan and from what I reasonably believe, I'm pretty sure we're going to finish on Thursday.

THE COURT: Okay. Now, other than the two witnesses that you expect to call tomorrow, do you have other witnesses as well?

MR. HASSAN: Yes, Your Honor, one other witness that we -- it looks like we'll call.

THE COURT: Okay. And then you don't know whether at this point whether you'll have rebuttal?

MR. BURT: No, although if it's just the three witnesses he's talking about, if it is, it would be a very small rebuttal case.

THE COURT: All right. Fine. That sounds good.

All right. We'll resume tomorrow morning then at 9:00 o'clock.

MR. BURT: Thank you so much.

MR. MULLINS: Thank you, Your Honor.

THE COURT: Sure.

(Said trial was adjourned at 4:30 p.m. to resume August 12, 2003, at 9:00 o'clock a.m.)

TEUSTMARK, v. GENERAL.
2000 WL 34590184 (N.D.Ill.) (Expert Trial Transcript)

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