

Insurance Archaeology: Protecting the Future Against the Past

AAPA Finance Seminar
April 9, 2014

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Why Insurance Archaeology?

*“The past is never dead.
It’s not even past.”*

William Faulkner

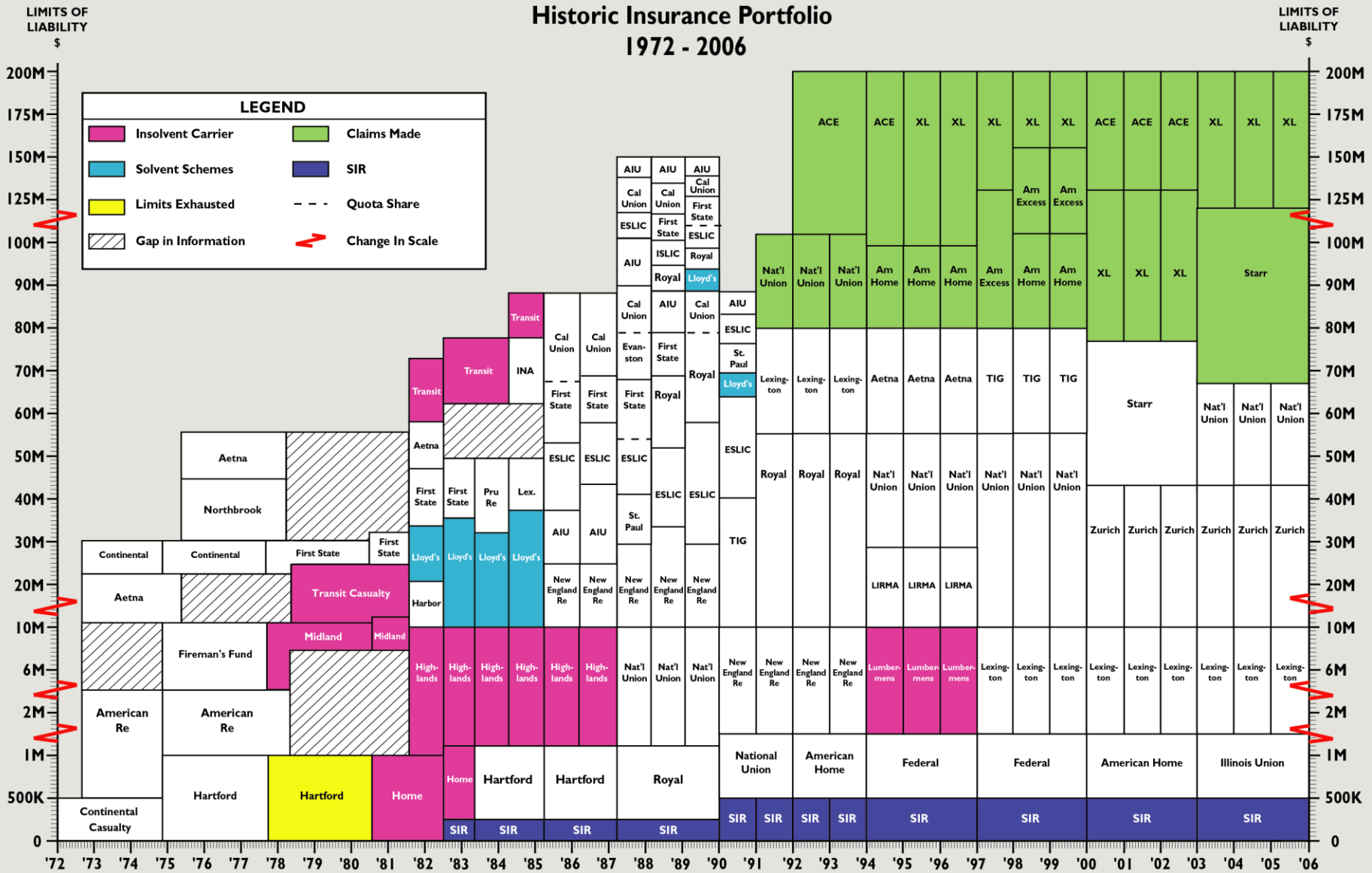
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Insurance Portfolios Under Siege

- ❖ Exhaustion of aggregate limits
- ❖ Insolvencies and solvent schemes
- ❖ Emerging torts
- ❖ Renewed environmental enforcement

Map the Portfolio

Historic Insurance Portfolio 1972 - 2006



The Historic Insurance Audit

- ❖ Organize existing insurance records
 - Identify actual gaps
 - Insolvent insurers
 - Exhausted and distressed limits
 - Restrictive coverage

Current Challenges

- ❖ Institutional histories can be complex
- ❖ Records disappear as operations merge and downsize
- ❖ Institutional memory is lost as key employees relocate and retire

Current Challenges

Decades of consolidation

- ❖ Carriers
- ❖ Brokers
- ❖ Law firms
- ❖ Records storage companies

The Search – Human Intelligence

Interview former employees

- ❖ Insurance
- ❖ Legal
- ❖ Finance
- ❖ Records

The Search - Internal Sources

Use *data mining* techniques

- ❖ Download electronic indices from off-site storage vendors
- ❖ Run keyword searches to identify pertinent records
- ❖ Physically inspect records

The Search



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The Search - Internal Sources

Target key departments

- ❖ Insurance
- ❖ Legal
- ❖ Accounting
- ❖ Secretary
- ❖ Engineering

The Search - What to Look For

Insurance records

- ❖ Policies
- ❖ Binders
- ❖ References in other policies
- ❖ Certificates of Insurance

The Search - What to Look For

Secondary Evidence

- ❖ Accounting records
- ❖ Billing and premium allocations
- ❖ Safety inspections by carriers
- ❖ Legal files/claims
- ❖ Board Minutes

The Search - Outside Sources

Much detective work can now be done online

- ❖ Identify successors to carriers, brokers, and additional insureds
- ❖ Locate key players through web searches and national directories
- ❖ Research past litigation using Lexis, Westlaw and federal and state court websites

Outside Sources - Carriers

Identify current successors and request records:

- ❖ All carriers that issued missing policies
- ❖ Excess carriers
- ❖ Workers' compensation carriers

Outside Sources - Brokers

Identify current successors and contact:

- ❖ Retail brokers
- ❖ Excess and surplus lines brokers
- ❖ London Market brokers

Outside Sources – Broker's Placing Slip

Broker's
Code 552

02/08/12 0/6
\$3200

552

J. H. MINET & Co., Ltd.
SUBJECT TO RENEWAL BEING REQUIRED

EXCESS COMPREHENSIVE LIABILITY REINSURANCE

R/I

CORPORATION AND SUBSIDIARY COMPANIES AS NOW OR HEREAFTER MAY BE
CONSTITUTED - as original.

36 months at August 10th, 1964.

In respect of all the Assured's operations - as original.

LIMITS:

P.I.	\$ 35,000 a.o.p.	and annual aggregate for Products
P.D. (Gen.)	\$ 35,000 a.o.o.	and annual aggregate each Section.
(Auto)	\$ 35,000 a.o.o.	

EXCESS OF:

P.I.	\$ 15,000 a.o.p.	and annual aggregate for Products
P.D. (Gen.)	\$ 15,000 a.o.o.	and annual aggregate each Section.
(Auto)	\$ 15,000 a.o.o.	

Form T.P.4 NMA.1305.

Tax and Tax Paid Clauses.
Service of Suit Clause (USA) name Mendes & Mount.
It is understood and agreed that this policy is subject to an overall
limit of \$35,000 ultimate net liability per one occurrence or accident or
aggregate where applicable involving Personal Injury and Property Damage.

It is also understood and agreed that notwithstanding any exclusion or
limitation herein contained, insurance is afforded to pay the value
(Assured's replacement cost) of defective goods, products or
containers thereof manufactured, sold, handled or distributed by the
Assured, and also the cost of repairing and replacing such defective goods
products or containers - as in the above section of original.

Leading U/Rs clause N.M.A.
Automatically agreed except increases up to U/R
written here plus 5% when agreed by leading U/R

Excess Comprehensive
Re-Insurance

Limits

Form T.P.4

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Outside Sources – Government Agencies



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Outside Sources – Courts

- ❖ Westlaw and Lexis searches
- ❖ State courts
- ❖ Federal courts

Outside Sources – Additional Programs

Identify additional programs

- ❖ Tenants
- ❖ Contractors

Conduct research

- ❖ Port records
- ❖ Public records

Reconstructing Terms and Conditions

- ❖ Standard insurance industry forms
- ❖ Specimen policies
- ❖ Policies from prior or subsequent years
- ❖ Policies issued to other insureds

Sample Policy Forms

T.P.4

0 2 3 1 1 * 30 APR 1968

T.P.4
CANADA

Form approved by Lloyd's Underwriters Fire and Non-Marine Association.

LLOYD'S EXCESS PUBLIC LIABILITY AND/OR PROPERTY DAMAGE AND/OR PRODUCTS LIABILITY POLICY (FACULTATIVE REINSURANCE)

(This Policy is a facultative reinsurance of a policy or policies which complies with the requirements of the Insurance Companies Act, 1958, as to security and otherwise.)

Whereas the Reinsured named in the Schedule herein (hereinafter called "the Company") has paid to the Underwriting Members of Lloyd's who have hereunto subscribed their Names (hereinafter called "the Underwriters") the premium stated in the Schedule and has agreed to make such further payments of premium as may be prescribed herein,

The Underwriters hereby agree, to the extent and in the manner hereinafter provided, to indemnify the Company for all sums which it shall become legally obligated to pay and shall pay, in respect of accidents occurring during the period mentioned in the Schedule, under its policy/ies specified in the Schedule (hereinafter referred to as the "Original Policy/ies") issued to the Assured named in the Schedule (hereinafter called "the Assured") and insuring the Assured against liability for

(a) Personal Injury
(b) Property Damage

up to the limits designated "Original Limit(s)" in the Schedule.

Provided always that:—


- Liability attaches to the Underwriters only in respect of such hazards as are set forth in Item 5 of the Schedule and only for such coverages and limits against which an amount is mentioned in Item 8(a) or 8(d) of the Schedule and then only for the excess of loss over the ultimate net loss liability as set forth in the Schedule in Item 8(b) and designated the "Primary Limit(s)" and then (i) the limits of the Underwriters' liability shall be such amount of ultimate net loss as would be required to be added to the Primary Limit(s) for the Company to give the Assured total limits as set forth in Item 8(e) of the Schedule under the designation "Total Limit(s)" or (ii) if it is not practicable to set forth in Item 8(e) of the Schedule under "Total Limit(s)" the combined limits of liability of the Underwriters and the Primary Limit(s) then the limits of the Underwriters' liability shall be those set forth in Item 8(d) under the designation "Excess Limit(s)" and the Underwriters shall be liable to pay the ultimate net loss up to the full amount of such Excess Limit(s).
- Subject always to the limit of liability "Each Person" for Personal Injury as stated in the Schedule, liability for Personal Injury involving more than one person is limited as stated therein under "Each Accident" but as regards Products Liability shall not exceed in any one policy year the limit of liability stated as "Aggregate" in the Schedule.
- Liability for Property Damage is subject to the limit "Each Accident" as stated in the Schedule, but as regards Products Liability and any hazard insured with an aggregate limit under the Original Policy/ies liability shall not exceed in any one policy year in respect of each such hazard the limit of liability stated as "Aggregate" in the Schedule.

DEFINITIONS

- ACCIDENT.** The word "accident" shall be understood to mean an accident or series of accidents arising out of one event or occurrence.
- ULTIMATE NET LOSS.** The words "ultimate net loss" shall be understood to mean the amount actually paid in cash in settlement of the liability of the Company after making deductions for all recoveries and for other valid and collectible reinsurances, excepting however any reinsurances protecting the Company for the difference between their retained limit(s) and the Primary Limit(s) set out in Item 8(b) of the Schedule, and shall exclude all expenses and Costs.
- COSTS.** The word "Costs" shall be understood to mean interest accruing after entry of judgment, investigation, adjustment and legal expenses (including, however, all office expenses of the Company, all expenses for salaried employees of the Company and general relator fees for counsel normally paid by the Company).
- POLICY YEAR.** The words "policy year" shall be understood to mean a period of one calendar year commencing each year on the day and hour first named in the Schedule.

CONDITIONS

- INCURRING OF COSTS.** In the event of claim or claims arising which appear likely to exceed the Primary Limit(s) no Costs shall be incurred without the written consent of the Underwriters.
- APPORTIONMENT OF COSTS.** Costs incurred with the written consent of the Underwriters shall be apportioned as follows:—
 - Should any claim or claims become adjustable prior to the commencement of trial for not more than the Primary Limit(s), then no Costs shall be payable by the Underwriters.
 - Should, however, the amount for which the said claim or claims may be an adjustable exceed the Primary Limit(s), then the Underwriters, if they consent to the proceedings continuing, shall contribute to the Costs in the ratio that their proportion of the ultimate net loss as finally adjusted bears to the whole amount of such ultimate net loss.
 - In the event that the Company elects not to appeal a judgment in excess of the Primary Limit(s) the Underwriters may elect to conduct such appeal at their own cost and expense and shall be liable for the taxable court costs and interest incidental thereto, but in no event shall the total liability of the Underwriters exceed their limit(s) of liability as provided for herein, plus the expenses of such appeal.
- APPLICATION OF RECOVERIES.** All recoveries or payments recovered or received subsequent to a loss settlement under this Policy shall be applied as if recovered or received prior to such settlement and all necessary adjustments shall there be made between the Company and the Underwriters, provided always that nothing in this Policy shall be construed to mean that losses under this Policy are not payable until the Company's ultimate net loss has been finally ascertained.
- PRIMARY INSURANCE.** Any change made in the Original Policy/ies prior to the happening of an accident for which claim is made hereunder (except as regards limits and period of liability, the renewal agreement, if any, and except as otherwise provided herein) shall automatically be covered under this Policy, provided that should such changes affect the premium paid or to be paid to the Company, then the premium hereon shall be adjusted accordingly.



Policy Form

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Sources of Policy Forms

- ❖ Insurance Libraries
- ❖ Consultants
- ❖ Other Insureds
- ❖ State Insurance Departments

Lost Policy Issues

- ❖ Evidentiary issues have been raised for all types of documentation including copies of signed policies
- ❖ Courts have upheld the validity of secondary evidence in proving missing policies
- ❖ Insurance companies often bear the burden of proving exclusions or exemptions to coverage

Prepare and Preserve

- ❖ Document as much coverage as possible to pursue solvent coverage while it is still available
- ❖ Document research to prepare for challenges by insurers
- ❖ Create an electronic system to quickly access data and preserve records

The Return on Investment

Excess Protection & Indemnity and Comprehensive, General, Personal Injury, Bodily Injury and Property Damage Liability including Products, Care, Custody and Control, Fire Legal Liability, Contractual Liability, Automobile and Watercraft (owned or non-owned), Aircraft (non-owned) Liability, Workmen's Compensation, Employers' Liability and/or Occupational Disease and/or Common Law Liability, Federal Railroad Employees & Federal Longshoremans, Jones Act, Advertisers Liability, Malpractice Liability, Liquor Law Liability, Warehousemans and Garage Keepers Legal Liability and Boiler Third Party - accident or occurrence basis

Excluding

War, Assault at instigation of Assured, Inefficacy, Owned Aircraft Liability and Fidelity

Territorial Limits - World-wide

Limit: \$2,000,000 any one loss

EXCESS of:

(a) Amounts recoverable under Underlying Insurance as per Schedule attached

(b) \$25,000 where no concurrent insurance

12 months at date bound by Agent

30 days Cancellation Clause

Service of Suit Clause.

Rate: 62¢ per \$100 payroll

Less 30%

NYD \$12500

157
10-56
A 27/12/57

93411/1
34112/1

Information only: Based on payroll \$2,400,000 approximately.

Access the
broadest coverage

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INF: ANNUAL AGGS.

as who use them to make various products. are insured with the Liberty Mutual Ins. Co. including Bodily Injury and Property Damage Products

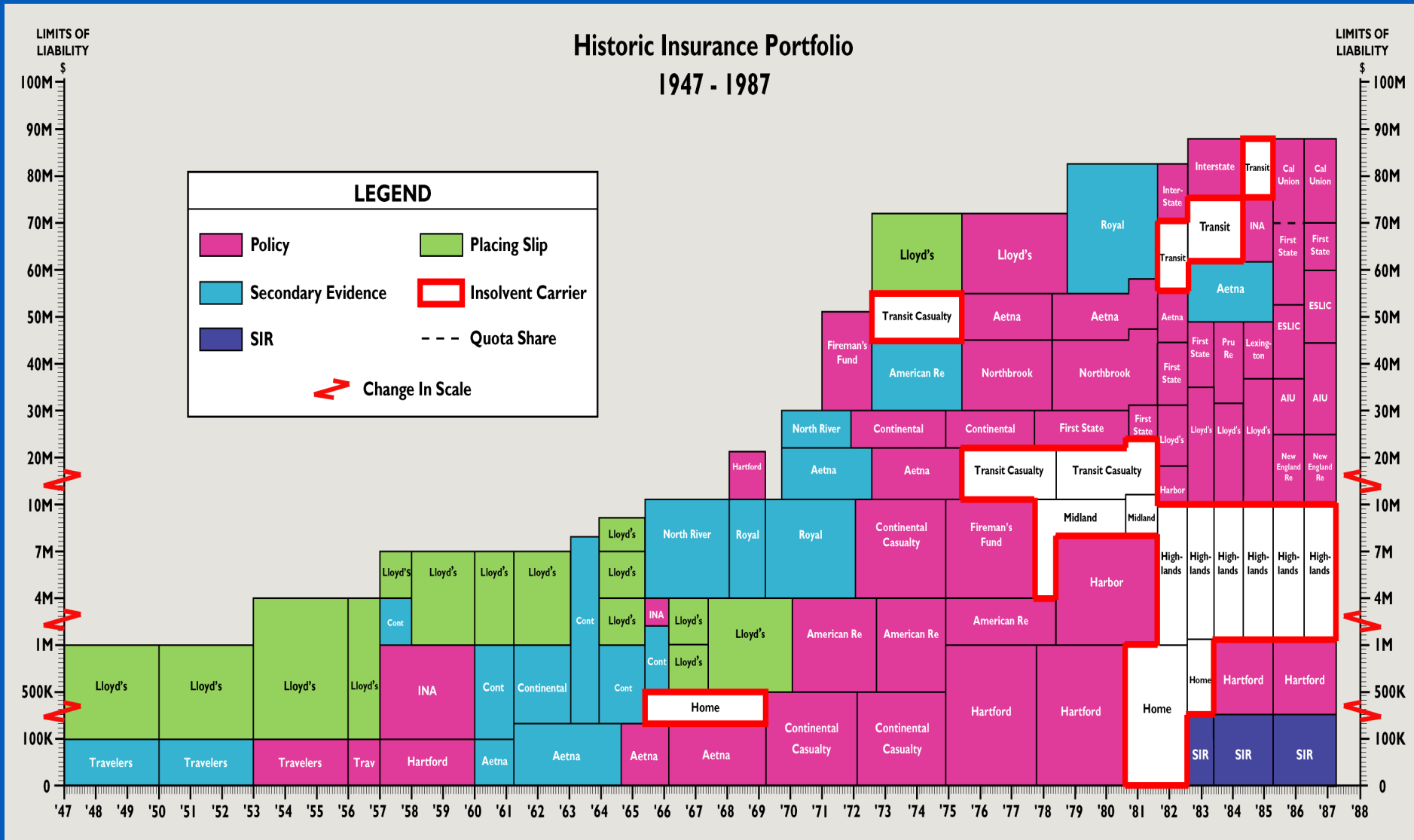
up with Liberty Insurance for \$10,000,000 covering BI, P.D. and Products all on an aggregate basis, - i.e. \$1,000,000 in all

3.08
15-38
109 812
604
7-70 add
520
7-21
1-35
7-21
4-54
7-21
989
*3%
LONDON & OVERSEAS A 1/0
VRG217788
4-62
07810
50x15
50x16
19-1-62
*4% ad 18/1/62
9-23
6-72
75% ORION *T* 28 W
18/21
*6% D.L.H. 25% ORION *T* 28 W
18/21
3-84
221
3 L6 X 3 6 9 7 2 0 2 1

Access the
broadest coverage

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The Return on Investment



The Return on Investment

- ❖ Quick access to the entire portfolio of assets
- ❖ Millions of dollars of coverage preserved and at the ready
- ❖ Maximize recoveries

Insurance Archaeology: Protecting the Future Against the Past

Presentation

by

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