

**Resumé of
James W. Macdonald, ARM
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Professional History

JW Macdonald Associates, LLC, Philadelphia, PA, 9/08 – Present

As an independent consultant, I have been engaged mainly in providing services to help resolve insurance or reinsurance disputes. Typically, I am asked to opine on the extent to which certain transactions may have departed from accepted underwriting or claims customs and practices. Since 2014, I have completed a dozen engagements on behalf of the IRS assessing microcaptive programs (or 831b captives). The parties engaging me include policyholders, investors, insurers, reinsurers, and state and federal agencies. Since 2008, I have completed over fifty engagements.

Navigant Consulting, Philadelphia PA: 5/06-7/08

As a member of the Actuarial and Claims practices, I provided expert services on disputes involving the roles and responsibilities of “fronting” insurers, captive insurers, and program managers in performing the critical tasks needed to succeed.

ACE-INA North America (now Chubb Corporation), Philadelphia PA, 9/09//01- 10/05

SVP & Chief Underwriting Officer for ACE Risk Management (ARM), 9/01-3/02: Initially, I was responsible for the nationwide underwriting of casualty insurance for major accounts and for specialty programs underwritten by managing general agents. Most of the programs involved some form of “alternative” risk transfer. A significant percentage of our \$1 billion in annual premium was ceded to captive insurance entities through “fronted” arrangements.

In the aftermath of the 9/11 terrorist attacks, in collaboration with leading international terrorism risk experts at the RAND Corporation, I co-authored innovative approaches for assessing terrorist risk exposures and developing actuarially sound pricing for individual risks. I was also engaged as an insurance industry representative in lobbying efforts explaining why a federal backstop was key to the private sector’s willingness to offer affordable coverage for losses from terrorist acts. This included a private meeting with the Secretary of the Treasury, a two-year effort with other insurers to launch a Pool to cover Worker’s Compensation losses from terrorist attacks, and a CSPAN televised presentation. These culminated in the enactment of a federal “backstop” (called the Terrorist Risk Insurance Act, or “TRIA”).

EVP & Chief Underwriting Officer, ACE-INA NA, 3/02-10/05: In early 2002, my responsibilities included the underwriting practices of fifteen separate North American business units (underwriting over \$3 billion in annual Property & Casualty premium). My duties also

included reviewing and approving new insurance coverages or unique and unusual exposures and resolving complex claims. During my final year, I was involved in developing many specialty insurance programs, including Cyber Risks, Environmental Insurance (EIL), and Employment Practices Liability (EPLI). I was also an executive team member who reviewed and approved proposals from ACE Financial Solutions involving financial risks. Examples include residual value insurance, insurance policy “novations,” and “loss portfolio transfers.”

American Psychologists’ Insurance Trust (APAIT), Washington DC, 2/01/01-9/01/01

VP of Underwriting: As the senior underwriter for this captive program and a licensed agent for the fronting insurer, I managed an extensive Professional Liability Insurance program fronted by a domestic insurer and reinsured by an offshore captive entity owned by the Trust. The Trust’s captive reinsured over 30,000 combined General and Professional Liability insurance policies through a “fronted” insurance arrangement managed by a Midwestern program manager. In most cases, I was also regularly involved in discussions with policyholders about the nuances of our combined claims-made professional liability and general liability policy form.

Reliance Reinsurance Corp., Philadelphia PA, 10/98-10/00

SVP of Professional Liability Treaty Underwriting: In the late 1990s, I handled a large book of treaty reinsurance produced by reinsurance brokers. The treaty clients included traditional and alternative insurance market individual risk and programs. Insurance lines included many types of Medical Professional Liability, Non-Medical Professional Liability, Cyber Risk, Management Liability, and Employment Practices Liability Insurance.

C.N.A. / Continental Insurance Companies (Chicago & NYC), 1/93 – 9/98

Executive VP for Continental’s Specialty Operations Group (SOG), 1/93-7/94: Initially, at Continental’s New York headquarters, I oversaw the underwriting of six business units in the insurer’s Special Operations Group. These units underwrote a range of specialty coverages, including Fidelity, Credit, Warranty, Surety Bonds, and **Excess & Surplus Lines** (or “Non-Admitted”) Insurance. I was also engaged in the launch of a new unit named “Continental Pro” underwriting Professional Liability for lawyers, accountants, architects, and other service providers.

CNA Group VP Professional Liability (8/94-5/95): Before the May 1995 acquisition of Continental, I was the manager of a large unit, writing over \$700M in professional liability policies annually. Most of the policies were issued on claims-made policy forms. This included over \$300 million in annual premiums from Medical Professional insurance and \$200 million from Architects’ & Engineers’ Professional Liability insurance.

President & COO, CNA HealthPro (5/95- 5/98): After completing the Continental acquisition, I became the senior officer of this integrated healthcare insurance unit. CNA HealthPro comprised six specialty units focused on hospitals, dentists, nurses, physicians, nursing homes, biotech

companies, and medical insurers. In 1997, this unit was the largest underwriter of Medical Professional Liability Insurance, surpassing the St. Paul Fire & Marine.

Chief Underwriting Officer, Special Operations Group (6/98-10/98): In my final months at C.N.A., as the CUO for all the specialty units, I was responsible for the underwriting of management liability (or “directors and officers” insurance), professional liability, and health provider insurance. In addition, I participated in the underwriting of customized financial risk programs. This included a multi-year financial guarantee policy to provide a minimum net return from distributing a pool of a major Hollywood studio’s movies over ten years.

American International Group (NYC), 10/89-1/93

SVP & Chief Underwriting Officer, AIG Risk Management (AIGRM, 10/89-1/91): As the CUO for this large business unit, I was mainly responsible for the underwriting and pricing of accounts with expected losses of at least \$500,000 annually. Almost all of the casualty and Workers’ Compensation programs involved a combination of loss-sensitive primary insurance (with premiums changing based on results) and fixed cost excess premium. My duties included reviewing and approving manuscript insurance policies, fronting captive reinsurance agreements, the annual auditing of ten branch offices, and resolving complex claims. At the time, AIGRM was the largest AIG business unit with over \$3 billion in gross annual premium, of which \$1 billion was Worker’s Compensation. Medium to small-sized insureds were written through a program unit that “fronted” the policy premiums, primarily to captive insurers.

President & COO of the General Casualty Group of the American Home Assurance Company (1/91-1/92): At the American Home, I was responsible for \$1.2 billion in primary and excess insurance underwritten by six business units. These units underwrote various commercial lines, including workers’ compensation for large and small policyholders, product liability over self-insured retentions, and excess and umbrella insurance for policyholders with less than \$100 million in annual revenue. Before his departure, at the request of senior management, I was engaged in developing what eventually became the industry’s first Employment Practice Liability Insurance Program (EPLI). The AIG’s Lexington Insurance Company successfully introduced the new coverage in mid-1992. It has become a core coverage in most commercial and captive insurance programs.

Munich American Reinsurance Co. (NYC), 10/81-9/89

During my eight years at MARC, I assumed a variety of roles, in some cases overlapping:

Casualty Treaty Department (81-84) Initially, I was engaged in auditing and underwriting casualty treaties for specialty lines such as Environmental Insurance (EIL).

Financial Risk Underwriting (81-84): I assumed the additional role of underwriting facultative or treaty requests for financial insurance risks during the same period. This involved proposals that would usually be declined because the risks to be insured were outside the normal scope of the traditional property and casualty underwriting units. Examples of the customized policies that I

assessed include Limited Partnership Surety Bonds (covering the risk that federal tax law changes might result in investors refusing to make scheduled payments to the General Partner), Systems Weather Insurance (guaranteeing a certain amount of funds if expected weather conditions did not occur) and Residual Value Insurance for leased assets (guaranteeing a minimum future value at the time of lease expiration).

Munich American Services Company (83-86): In the mid-1980s, I was engaged in the launch of this new fee-based consulting subsidiary. After the completion and acceptance by Munich Re (Germany), the main focus of this consulting firm was on providing advice to foreign reinsurers on their options for commuting or otherwise terminating their obligations under unprofitable American treaty business. My involvement ended with the hiring of full-time staff in 1986.

Casualty Facultative Department (85-89): Initially, I was responsible for the review and approval of large premium items or unusual risks beyond our eight casualty facultative branches. In 1987, I was promoted to Senior Vice President and was responsible for all aspects of the department's nationwide operations. During these years, I expanded the scope of our underwriting into specialty lines, including Medical and Non-Medical Professional Liability insurance, Directors & Officers (D&O) Liability, and Media Liability Insurance. We also launched a new "Alternative Risk" unit in our headquarters that underwrote business from reinsurance brokers that was unavailable to us directly. Most of these opportunities involved new provider-owned insurance entities such as captives and risk retention groups.

Marsh & McLennan P&C Consultants (NYC), 7/78-5/80

AVP, Captive Insurance Company Specialist: My primary focus for this specialty consulting subsidiary was creating a new, integrated liability insurance policy for a captive insurer to be launched by the nation's largest gas and electric utilities. After two years of detailed meetings with the fifteen founding members, a leading Lloyds of London syndicate approved the fifty-page policy for reinsurance. The captive entity, Associated Electric & Gas Services (or AEGIS), began operations in the early 1980s and is still active today. Upon completing this project, I returned to Canada with the surplus lines broker and managing general agent, noted below.

Ian Elliott Limited (Montreal and Toronto), 10/75 – 7/77 & 6/80 -10/81

VP, Marketing & Underwriting: During my two periods of employment with this firm, I handled the production, underwriting and/or brokerage placement of customized (or "manuscript") specialty liability excess insurance policies. In my additional role as a managing general agent, I underwrote excess insurance with facultative reinsurance negotiated separately on each policy. In my final year, I introduced Canadian brokers and agents to a new Lloyds of London insurance cover called Environmental Impairment Liability Insurance (or EIL). Over the last four decades, this specialty coverage has become a standard part of commercial or alternative market programs covering any policyholders with environmental exposures.

General Reinsurance Corp (New York City & Montreal), 8/71 - 09/75

Casualty Facultative Underwriter: In this role, I was responsible for producing and underwriting individual risk opportunities and commercial umbrella treaties. The main types of

insurance underwritten were Umbrella Liability, Products Liability, Workers Compensation, transportation risks, and various forms of Medical and Non-Medical Professional Liability insurance.

Industry Boards, Associations & Awards

- ARIAS, Member & Certified Arbitrator (2010 - 2017) American Reinsurance and Insurance Arbitration Society)
- Professional Liability Underwriting Society (PLUS), member (1985 – 2015)
- International Risk Management Institute (IRMI): Terrorism insurance expert commentator (2006 – Present)
- ACE INA Insurance Companies, Board of Directors (2003-2005)
- National Council of Compensation Insurers (NCCI): *WC Residual Market Pool*, Board Member, ACE-INA representative (2005)
- Rand Corporation *Institute of Civil Justice*, Member of Advisory Board (2004-2005), Senior Fellow (Adjunct Staff, 7/08-1/15)
- American Medical Association, *National Patient Safety Foundation at the AMA*, Board Member, Executive Committee Member (1995-1998)
- Munich American Reinsurance Corporation: Member of seven-person senior management team (1987-1989)
- *ReActions* Magazine – 1987 Reinsurance Underwriter of the Year, Honorable Mention. Cited as “an underwriter’s underwriter.”

Education

- University of Notre Dame, B.A., English Literature and Philosophy, 1971, *Dean’s List* final three years
- New School for Social Research, Masters-in-Philosophy, 1972: Completed the first year of the two-year program.
- The College of Insurance, NYC, Selected casualty classes (1971)
- New York University, Continuing Education, 1982-1984: Completed Statistics, Credit Analysis, Asset-Based Financing and Commercial Lending courses.
- Numerous industry educational seminars as an attendee and as a speaker, including Casualty Actuarial Society Ratemaking Seminars, NCCI Annual Issues Symposiums (on Workers Compensation),

Professional Designations

- Licensed Resident Surplus Lines Broker, PA, (2002-04 and 2010-12)
- Associate in Risk Management (ARM), AICPCU Institute, 2006
- Chartered Property & Casualty Underwriter (CPCU), AICPCU Institute (2009-2023)
- ARIAS, Certified Insurance and Reinsurance Arbitrator (8/10 – 12/18)

Publication Listing (Since 2001)

Date	Title	Publication
2001	“Medical Malpractice Insurance: A Prescription for Chaos”	<p><i>Conning & Company, 2001</i></p> <p>This detailed research report explaining the sustainable, competitive advantages of health care captive insurers and other types of provider-owned insurers over large, multi-line stock insurers with a focus on policyholder entities’ preferred risks and superior claims management practices.</p>
2004	“Terrorism, Insurance, and TRIA: Are We Asking the Right Questions?”	<p><i>John Liner Review, Summer 2004</i> <i>Volume 18, No. 2</i></p> <p>An assessment of the “ideally” insurable aspects required for a risk to be considered “insurable” and the reasons why a federal backstop is critically important.</p>
2004	<p>“Captives and Terrorism Risk”</p> <p>Co-authored with William Curcio</p>	<p><i>John Liner Review, Winter 2004</i> <i>Volume 17, No. 4</i></p> <p>The potential, valuable role of captive insurers in providing needed capacity for uninsured or underinsured losses from future terrorist attacks.</p>
2005	“Underwriting Discipline in a Softening Market”	<p><i>John Liner Review, Summer 2005</i> <i>Volume 19, No. 1</i></p> <p>A consideration of the practical meaning of “underwriting discipline” in a softening market. Explains why captive insurers are best understood as the latest versions of what were previously called mutuals and reciprocals, and the valuable role they frequently serve.</p>
2006	“Terrorism, Insurance, and Preparedness: Connecting the Dots”	<p><i>Cambridge University Press, Chapter 19: Seeds of Disaster, Roots of Response”, 5/2006</i></p>

Date	Title	Publication
		Reviews the unprecedented insured and uninsured losses for recent terrorist attacks and discusses the need for improvements to public and private sector insurance and preparedness.
2007	<p>“Commercial Wind Insurance in the Gulf Coast States Developments Since Hurricane Katrina and Challenges Moving Forward”</p> <p>Co-authored with Lloyd Dixon and Julie Zissimopoulos</p>	<p><i>RAND Corporation, DRR-4243-ICJ, June 2007.</i></p> <p>Reviews the impact of the historically unprecedented hurricanes between 2005 and 2007 and considers possible improvements for the public and private sector’s wind and flood insurance programs.</p>
2009	<p>“Reinsurance” and “Traditional Reinsurance”</p>	<p><i>IRMI, Risk Financing, 2nd Reprint, September 2009</i></p> <p>Introduction to the history of Reinsurance and a description of “traditional” facultative and treaty reinsurance practices.</p>
2009	<p>“California’s Volatile Workers Compensation Market”</p> <p>Co-authored with Lloyd Dixon and William Barbagallo</p>	<p><i>RAND Corporation, MG949,</i></p> <p>A detailed report commissioned by the California Commission on Health and Safety and Workers Compensation. Assesses why large and small California Workers Compensation insurers failed in the early 2000s. Includes a considerations of the role of “fronting”, managing general agents, reinsurers, captive insurers, and regulators.</p>
2013	<p>“Arbitration Clauses in Specialty Liability Policies”</p>	<p><i>IRMI, The Risk Report, Volume XXV, No. 10, June 2013 and</i></p> <p><i>ARIAS, Fourth Quarter 2013, Volume 20, Number 4 (Reprint), and</i></p>

Testimony at Trial or Arbitration (Since 2012)

Arbitrations	
Parties	Testimony
1. Insurer versus Reinsurer	<p>Testified at a 2013 deposition on behalf of an insurer in a dispute with a former reinsurer. After new discovery documents were reported, testified at a second deposition in early 2014.</p> <p>Testified in February 2014 at the confidential and private arbitration hearing in Detroit, Michigan.</p> <p>The matter involved the right of the cedant to group related asbestos products liability claims from a policy ceded under and excess of loss “per event” treaty.</p>
2. Excess products liability insurer versus a large American Manufacturer	<p>Testified at a deposition and a Hearing on behalf of the excess insurer in this confidential and private arbitration.</p> <p>This dispute centered on a provision in the manuscript excess policy that granted limited coverage for certain liability batch claims also covered by the “sweep” clause in expired Bermuda excess policies (January 2014).</p>
3. Insurer versus Reinsurer	<p>Testified at deposition on behalf of an insurer in a dispute with a former reinsurer (April 2016). The arbitration was confidential and private.</p> <p>The matter involved the right of the cedant to group related asbestos products liability claims from a policy ceded under and excess of loss “per event” treaty.</p>
4. Insurer versus Reinsurer	<p>Testified at deposition and a Hearing on behalf of an insurer in a confidential and private arbitration with a former reinsurer (March 2017).</p> <p>The matter involved the question of the reinsurer’s right to deny claims based on the alleged materiality of an internal reinsurance document between the cedant and a related insurance company.</p>

Arbitrations	
Parties	Testimony
5. Insurer vs. Reinsurer	<p>Testified at deposition and hearing on behalf of an insurer in a confidential and private arbitration with a former reinsurer (September 2017).</p> <p>The matter involved the question of whether late-reported large Workers Compensation claims were barred by the Commutation, Sunset and/or the Errors & Omissions articles in the reinsurance and retrocessional agreements in effect from 1986 to 1988.</p>

Litigations	
Parties	Testimony
<p>HARCO INSURANCE (PLAINTIFF) V. GRANT THORNTON (DEFENDANT)</p> <p>State of North Carolina, Wake County, Superior Court Division, File No. 05 CVS 2500, and CVS 2299.</p>	<p>Deposed as expert witness on behalf of the insurer as Plaintiff. Deposition taken 10/6/08-10/9/08. Testified at trial on July 24, 2012.</p> <p>This matter involved the extent to which an insurer relies upon a CPA's unqualified opinion in a recent financial report as a part of the assessment of a prospective MGA.</p>
<p>CRUM & FORSTER INSURANCE COMPANY V. VIRGIN OIL, INC. ETAL</p> <p>Civil District Court for the Parish of Orleans, New Orleans, Louisiana,</p> <p>Civil Action No. 2011-8906.</p>	<p>Deposed in June 2014. Provided expert opinion on behalf of the insurer regarding certain D&O Insurance policies underwritten for Virgin Oil. This matter settled prior to trial in September 2014.</p> <p>This matter involved industry customs and practices regarding the intent of the "related acts" wording in claims-made policies and certain other exclusions frequently attached to D&O policies.</p>

Litigations	
Parties	Testimony
<p>SYZYGY INSURANCE CO., INC. ET AL., (PETITIONERS) v. COMMISSIONER OF INTERNAL REVENUE SERVICE (RESPONDENT)</p> <p>Docket Nos. 2140-15, 2141-15, 2142-15, 2143-15, and 2182-15</p> <p>Judge Ruwe</p>	<p>Testified on behalf of the Internal Revenue Service (IRS) in December 2017.</p> <p>This dispute involved the extent to which the insurance underwriting and claims management transactions of this “microcaptive” (or “831b”) insurer reflected commonly accepted practices in an “arms-length” marketplace.</p> <p>The tax court ruled in favor of the IRS. This opinion was issued on April 10, 2019 (T.C. Memo 2019-34). The judge cited Macdonald’s pricing and coverage assessments in his ruling.</p>
<p>AMERISURE MUTUAL INSURANCE COMPANY, Plaintiff, v. TRANSATLANTIC REINSURANCE COMPANY, Defendant.</p> <p>THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN</p> <p>Case No. 18-cv-11966 Hon. Stephen J. Murphy, II</p> <p>Magistrate Stephanie Dawkins Davis</p>	<p>Deposed on March 18, 2021. Provided opinions on behalf of the Plaintiff. As of mid-November, this case awaits the Court’s decision on two pending Motions for Summary or Partial Judgement.</p> <p>This dispute involves the inability of the Plaintiff to recoup asbestos -related Products Liability claims and expenses payments reinsured facultatively by the Defendant in the early 1980s.</p> <p>Similar to the early 1990s <i>Bellefonte Re</i> case, the Defendant (reinsurer) is claiming that its maximum obligation is capped by the amount stated as “Reinsurance Accepted” in its two facultative reinsurance Certificates.</p> <p>This case settled in early 2022 pre-trial.</p>

Litigations	
Parties	Testimony
<p>TERRANCE J. KEATING & JANET D. KEATING, ET AL (PETITIONERS)</p> <p>VS.</p> <p>COMMISSIONER OF INTERNAL REVENUE (RESPONDENT)</p> <p>UNITED STATES TAX COURT Docket No(s): 15066-18; 15067-18; 15068-18 Judge Paige Marvel</p>	<p>This dispute centers of whether the transactions over three tax years reflect the acceptable customs and practices of the insurance and reinsurance industries.</p> <p>I submitted a detailed opening report reviewing departures from acceptable claims and underwriting practices.</p> <p>Testified on behalf of the Respondent on November 3, 2021.</p> <p>The Tax Court decision was issued in January 2024, in favor of the IRS.</p>
<p>IN THE SUPERIOR COURT OF THE STATE OF DELAWARE</p> <p>ZURICH INSURANCE COMPANIES – PLAINTIFF-</p> <p>VS.</p> <p>SYNGENTA CORPORATION DEFENDANT</p> <p>C.A. N19C-05-108 MMJ CCLD</p>	<p>Deposed in March 2022 as an expert on behalf of the Plaintiff.</p> <p>This case involves the insurer’s denial of claims made by the Plaintiff based on the allegation that there were materially inaccurate statements in the Bermuda Market Application and that the information provided was materially incomplete.</p> <p>This matter was tried in early October of 2022. I was not asked to testify at trial.</p> <p>The Court rules on favor of the Defendant in early 2023.</p>

Litigations	
Parties	Testimony
<p>CD LISTENING BAR. ET. AL., (Petitioners) VS. COMMISSIONER OF INTERNAL REVENUE SERVICES (Respondent) UNITED STATES TAX COURT OCTOBER 2023 Judge Laubert</p>	<p>I submitted three expert reports in this engagement composed of an opening report, a supplemental report (based on new discovery documents) and a rebuttal report.</p> <p>The expert portion of the bifurcated trial was completed in October 2023 in Phoenix, AZ.</p> <p>I testified on behalf of the IRS.</p> <p>A decision by the Court is expected at some time in 2025.</p>
<p>IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA.</p> <p>AIR EQUIPMENT CORPORATION. ET AL. Plaintiffs, vs. HDH GROUP, INC. ET AL, Defendants. Docket No. G.D. 19-009688</p>	<p>In early 2024, I was engaged by the Plaintiff owners of a microcaptive that settled a dispute with the IRS.</p> <p>The matter involves an allegation that the Defendant owners of an 831b captive entity were negligent and caused damages in the legal, underwriting, and actuarial services provided to the Plaintiffs 831b captive program from 2010 through 2015. My rebuttal report was submitted to the Court several months ago.</p> <p>As of July 2024, no trial date has been set. The Court will reportedly be considering the Defendants' MSJ motion sometime in the fall.</p>