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Minnesota Association of Farm Mutual Insurance Companies

Mutual LINK

## Bad Faith Battle Over

*By Marcus Marsh*

The Minnesota House and Senate passed bad faith legislation that is very different from the original bill supported by the trial lawyers, and sponsored by Sen. Tarryl Clark (D-St. Cloud) and Rep. Joe Atkins (D-Inver Grove Heights). For the time being, the vote ends a two-year battle between the trial lawyers and the Minnesota insurance industry.

The tightly written language in the bill was written by the insurance industry as a 'strike all amendment' known as the Scheid Amendment. This amendment was substituted for the Trial Lawyers Bill S.F. 2822 by Sen. Linda Scheid (D-Brooklyn Park). A different version passed the House but with the help of a veto threat letter from Governor Tim Pawlenty the Conference Committee agreed to the Scheid Senate version.

The bill is first party bad faith only, with a two part test for the liability standard to file a case using the original Anderson Standard from Wisconsin. There are no punitive or exemplary damages in this bill. MAFMIC was also successful in getting language in the bill excluding township mutuals and our combination policies.

We could have had a very harmful bill that would have severely hurt our member companies and their policyholders. It is because of the tremendous efforts of the MAFMIC membership that the outcome was very different than the one desired by the trial lawyers.

## The Gift That Keeps on Giving

*By Doug Oachs*

On occasion, I have heard it asked, *"What are we getting for our MAFMIC dues?"* Maybe the question should be, *"What are we saving by being a member of MAFMIC?"* Let me give you just one example.

Minnesota Statute 297I.05 imposes taxes on insurance premiums and a portion benefits Minnesota firefighters. On July 1, 2007, H.F. 2916 became law changing MS 297I.05. In its original form, this bill would have raised premium taxes on the township mutuals and statewide companies doing business in Minnesota. MAFMIC intervened!

After hours of meetings with both legislators and firefighters, Minnesota's township mutuals were exempted from an additional tax of .65% and our statewide companies continued at their current tax level of .5% on the fire only portion of the premium. The additional tax of .65% on the entire premium applies only to companies above a certain size as is listed in MS 297I.05, subdivision 4.

An easy way to figure out what this bill would have cost a township mutual annually is to simply multiply Direct Written Premium (DWP) by .65%. In the example of Delaware Mutual, our additional annual cost would have been $4,454 – much more than our MAFMIC membership dues.

*Continued on page 3*

### Inside this Issue

# Letter from the President

*By Wes Gainey*

In the movie, **I Am Legend**, Dr. Robert Neville (Will Smith) battles blood sucking zombie creatures. Asked why he continues to fight? Dr. Neville answers by quoting singer and activist Bob Marley, "*The people who are trying to make this world worse are not taking a day off. How can I?"*

After a two-year battle, there is a new bad faith law in the State of Minnesota. Thanks to you and others in the insurance industry this law is a far cry better than the one the trial lawyers wanted. You can bet that the trial lawyers will not be taking a day off in furthering their efforts.

Evidence of the trial lawyers' desire to secure legislation favorable to them can be found by examining their political contributions. Over a three-year period, according to the Minnesota Campaign Finance and Public Disclosure Board, "TRIAL PAC" raised a total of $243,401. TRIAL PAC's contributions to political campaigns and committees during this same time period came to $215,173. It is easy to see by reviewing the list of those who received these contributions that a majority of them were strongly supportive of the trial lawyers and their bad faith bill.

In comparison, the MAFMIC PAC raised $33,653 and made contributions of $23,870. Besides the amount, another key difference is that MAFMIC PAC contributions were very bi-partisan in nature. Even if one adds in the Insurance Federation PAC, total funds raised come to less than $53,000 with contributions under $44,000.

Whether we like it or not, a PAC is an essential tool in helping select and support representatives who truly wish to protect our small companies and their policyholders. However, it is only one "arrow in the quiver" of our advocacy efforts. A well funded PAC, along with our tremendous grassroots efforts, will help ensure that the farm mutual insurance industry continues to protect consumers within a favorable small business environment.

Again, thank you for supporting our efforts in dealing with the trial lawyers. You are my hero! Will Smith only had to fight blood sucking zombies. What a whimp!



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# Member Profile

## Crow River Mutual Insurance Company

Crow River Mutual Insurance Company is located in the northwest corner of McLeod County, Minnesota. The company was organized in July of 1880 by a group of farmers fulfilling a need to insure their properties from disaster. In 1998, Acoma & Lynn Mutual Insurance Company of Hutchinson, and Collinwood Mutual Insurance Company of Dassel, merged and became Crow River Mutual Insurance Company. Crow River has a staff of three in the home office and out source claims to Mutual Adjusting Services, Inc. of Hector. There are 25 agents who represent ten independent agencies within Crow River's writing territory.

Crow River Mutual was mainly a farm insurance oriented company until approximately six years ago. At that time, it saw the opportunity to expand its writings in the homeowners market. It also recognized the fact that farming was changing and the risks were becoming larger and more complex. With this, Crow River has increased its knowledge of what is happening out on the farm and are making the necessary changes to meet the needs of their customers.

Crow River Mutual Manager Robert Wendorff explains, "Our customers trust us with their livelihood, therefore it is our obligation to meet these needs. With the help of our statewide partners, I still feel that we provide them with the best protection – at the best price."

Wendorff believes that the future looks bright for the mutuals in Minnesota. He states, "We are currently drawing up plans for a new home office. With that we will be updating our entire office processing systems and going to a completely paperless office. We will be looking to expand our presence on the Web for both policyholders and agents."

"Challenges will be coming our way", Wendorff says. We need to address the changes in the way we do business. We will need to change with our policyholders in the way they do things. We now find that those in Washington, D.C. feel that they can do a better job of regulation than what the states are doing individually. We will need to convince our politicians that we are not adversaries. We are active members in our communities, and not just people that they can see how much money they can take from us and our policyholders."

Asked to describe Crow River Mutual in one word, Wendorff says that word would be "Trust. Our policyholders have been customers of ours for not just many years, but for generations. With each generation of new policyholders, you cannot just assume that they will trust you the same as past generations. You have to earn that trust every time you send out a premium notice."

*Crow River Mutual is located in Hutchinson*

## The Gift...

*Continued from page 1*

In the words of Cousin Eddie from *National Lampoon's Christmas Vacation*, "It's the gift that keeps giving, the whole year round." It pays to belong to MAFMIC!

# The Fed and Interest Rates: What are the Impacts?

*By Wayne Schluchter, Schluchter Investment Advisors*

In a surprise move this past January, the Federal Reserve cut interest rates 75 basis points or 3/4's of 1%. The following week at their regularly scheduled meeting the Fed lowered rates another ½%; a remarkable drop of 1.25% in short term rates which we have not witnessed for almost 40 years. The current overnight bank lending rate established by the Fed now resides at 3.0%. The current 3% rate is down from the 5.25% charged back in August. Clearly the Federal Reserve has shifted their focus from fighting inflation to promoting growth in the economy. What are the current and future ramifications of this shift in policy?

• Money market & short term CD rates have dropped from historically high levels (4%-5%) of the past three years to a more normal rate of 3%-4%. Short term rates will fall further before they eventually begin to rise. Short term rates could drop below the 2% range later this year.

• The yield curve has shifted from a flat or inverted chart to a sharply upward sloping graph. Prior to late August, short term rates were yielding more than intermediate or long term rates. Today the 2 year Treasury yields less than 2%, the 10 year Treasury yields 3.8% and the 30 year Treasury pays 4.5%. We find it worth noting that the 10 year Treasury rate was 3.3% the day the Fed cut rates 75 basis points back in January. Today it's yielding 3.8%. While the absolute yield is not impressive the 1/2% increase as the Fed is cutting rates says the bond market expects growth to re-emerge and inflation to return.

• Callable bonds such as CD's & government agencies have redeemed at a pace not seen for two decades or more. A majority of those called securities have occurred in the 1-10 year range. With the yield curve more normally sloped, replacement of called securities can be managed without a great deal of lost income to portfolios.

What does it mean for you? Short term securities will provide lower and lower returns for the foreseeable future. Adequate cash & short term securities should be held for operating and claims paying ability. Surplus should be invested in intermediate and long term bonds. For companies paying tax on income vs. premium receipts the municipal bond market will provide comparative yield advantages over CD's & agencies. Please consult your auditor or financial representative for specifics relating to your account. As always, please feel welcome to contact us with any questions or comments you may have.

# Agent Liability

*By Jason Bartlett of Willenbring, Dahl, Wocken & Zimmerman, PLLC*

Under certain circumstances, legal claims can be made against insurance agents for their errors or omissions in obtaining insurance policies for their clients with the right types and amounts of insurance coverage. These claims typically arise after a loss occurs and the policyholder realizes that their policy does not provide coverage for the loss sustained, or that the amount of the insurance coverage is insufficient to cover the loss.

An insurance agent's duty is ordinarily limited to act in good faith and to follow instructions. An insurance agent typically does not have an affirmative duty to update an insured's policy at the time it is renewed or to inquire about any changes that have occurred which would affect coverage. It is generally the insured's responsibility to inform the insurance agent of changed circumstances which might affect the coverage of the insurance policy because the insured is in a better position to know and communicate those changes than it is for the insurance agent to be expected to discover the changes on his or her own initiative.

However, if the insurance agent and the insured have a "special relationship", the insurance agent may be under a duty to offer, advise or furnish additional insurance coverage. Failing to do so can create liability on the part of the agent.

A special relationship can be established when the insurance agent agrees to examine the insured's exposure and advise the insured with regard to the potential exposure. Additionally, a special relationship can be established by the particular circumstances of the insuring transaction. Factors that are considered by Minnesota Courts when determining whether or not a special relationship exists include the following:

1. **The agent's knowledge of the illiteracy or unsophistication of the insured in insurance matters.** Courts are more likely to find the existence of a special relationship if the agent knows that the insured is illiterate, uneducated, or has a limited understanding of how insurance works.
The opposite is true if the insurance agent knows that the insured is college educated, has had many prior insurance policies, and has a sophisticated understanding of insurance matters.

2. **The agent's knowledge that the insured was relying upon the agent to provide appropriate coverage.** Reliance is more likely to be found when the insured places all of his or her policies through the same agent year after year. Reliance is less likely to be found when the insured uses multiple agents, changes policies and/or agents from time to time, or routinely requests changes in coverage.

3. **The agent's knowledge that the insured is at risk of suffering an uninsured loss because he lacks coverage for such type of loss.** If the insurance agent knows that the insured has added to or modified their property in a way that affects their insurance coverage, the agent is more likely to have a duty to offer, advise or furnish additional insurance. Visits to the insured's property and detailed discussions of the insured's property can provide such knowledge.

4. **Misrepresentations of coverage to the insured by the insurance agent.** It goes without saying that misrepresentations of coverage should always be avoided. Not surprisingly, misrepresentations of coverage can be used to create a special relationship and agent liability.

5. **The agent's promise to exercise greater skill and care than a reasonably prudent insurance agent, or voluntary assumption of the duty to advise on types and amounts of insurance.** This factor would be present in cases where the insurance agent assumes the insured's duty to identify whether circumstances have changed which affect the insured's coverage. Conducting detailed inquiries at the time of renewal to ferret out information which brings the policyholder within the provisions of their policy's exclusions, along with other factors, might be evidence of the assumption of this duty.

To avoid agent liability issues, insurance agents should be cognizant of the above factors that can create such liability when they market their services and during their dealings with policyholders. In this regard, an ounce of prevention is better than a pound of cure.

# MAFMIC Educational Scholarship Golf Outing

## Best Ball Scramble

Little Crow Country Club ~ Spicer, Minn.

**Thursday, July 17, 2008**

**9-10 a.m. – Rambow Open House, coffee & rolls**
*all who attend will receive a Rambow golf hat
**10:30 a.m. – Registration**
**11:30 a.m. – Shotgun Start**
**4:30 p.m. – Dinner & Awards Ceremony**
*NEW: Traveling Trophy for 1st Place Team, *the ultimate bragging rights!*

Register with MAFMIC's office by June 27, 2008

**Golf Package - $80.00**

*Fee Includes: Green Fees, Golf Cart, Bag Lunch, Beverage Tickets (2), Prizes and Dinner*

**Dinner Only - $15.00**

**'Sponsor a Hole'** *and help educate Minnesota's youth* **- $100**

***New Fundraiser:** Mulligans (one per person & four max. per team) will be sold at the golf course for $5.00

## MAFMIC Educational Scholarship Golf Outing

Name: _____

Company: _____

Address: _____

Email: _____

Average 9 Hole Score or

Handicap for 9 holes: _____

Phone: _____

**Number attending Rambow Open House:** _____

***Please check all that apply:***

| | |
|---|---|
| **Golf Package - $80.00 per person** | **$** _____ |
| **Dinner Only - $15.00 per person** | **$** _____ |
| **Hole Sponsorship - $100 per hole** | **$** _____ |
| **Other Sponsorship** | **$** _____ |
| **TOTAL ENCLOSED** | **$** _____ |

**Playing Partners:** _____ _____ _____

# NAMIC Farm Mutual Director Certification

Beginning with the Manager and Director's Seminar on July 16, MAFMIC will begin offering sessions that will give company directors credit toward the **NAMIC Farm Mutual Director Certification (FMDC)**. The FMDC program formally recognizes the educational accomplishments and dedication to professionalism of the farm mutual director.

The program consists of three modules. The **Management** module includes classes on *Corporate Governance, Role of the Board, Board Member Liability, Insurance Regulatory Environment, Management Relation/ Succession Planning, Human Relations* and *Planning*. The **Operations and Insurance** module includes classes on *Insurance Company Operations, Underwriting, Claims, Reinsurance* and *Marketing.* The **Finance and Accounting** module includes classes on *Understanding and Analyzing Financial Statements, Investments, Insurance Specific Performance Metrics* and *Insurance Accounting.*

To become certified, individuals must fulfill the following requirements:

- Submit a completed application.
- Attend four sessions from each module within five years.
- Be an active director for a farm mutual insurance company at the time of completion.

Individuals meeting the designation requirements receive:

- Recognition at the NAMIC and MAFMIC Annual Convention.
- A certificate of completion.
- A lapel pin.
- 20% discount on specified NAMIC seminars and meetings.

Companies with a majority of their board members achieving certification may be eligible for a discount on NAMIC Insurance Company (NAMICO) D&O insurance.

## Company News & Notes

# MAFMIC 2008 Calendar of Events

| | | |
|---|---|---|
| June | 18-19 | **NAMIC Congressional Contact Visit**<br>Washington, D.C. |
| July | 16 | **Manager & Directors Seminar**<br>St. Cloud Civic Center, St. Cloud |
| | 17 | **Educational Scholarship Golf Outing**<br>Little Crow Country Club, Spicer |
| Aug, | 5-7 | **Farm Fest 2008**<br>Gilfillan Estates, Redwood County |
| | 7 | **Mutual Support Staff Seminar**<br>Holiday Inn, St. Cloud |
| | 12 | **Adjuster & Inspector Seminar**<br>Holiday Inn, St. Cloud |
| Nov. | 5-6 | **Short Course**<br>St. Cloud Civic Center, St. Cloud |
| Feb. | 1-3 | **2009 Convention**<br>Sheraton, Bloomington |

To submit an article to be published in the Mutual Link please send them to Mutual Link, PO Box 880, St. Joseph, MN 56374, or email them to info@mafmic.org.

**IN SYMPATHY**

***William "Bill" Schultz,*** Mankato, passed away on March 1, 2008. Bill was President of Kelso & Shelby Farmers Mutual from 1996 until 2007. Bill also served on the Board of Directors for 21 years.

***George Kuttner,*** Stewart, passed away on April 19th, 2008. Beginning in 1980, George served as an agent for Buffalo Mutual and was on the board for 25 years. He also served on the board for Buffalo Lake-New Auburn Mutual.

***MAFMIC wishes to express its sympathy to the family and friends of Bill and George.***

## *Thank you to our 2008 Education Partners!*

**North Star Mutual Insurance Company**

**RAM Mutual Insurance Company**

*Partners In Protection Since 1931*

Spring Valley EST. 1883 MUTUAL INSURANCE COMPANY

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